



FEDERAL REGISTER

Vol. 91

Friday,

No. 25

February 6, 2026

Pages 5267–5664

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.federalregister.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at www.govinfo.gov, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, gpocusthelp.com.

The annual subscription price for the **Federal Register** paper edition is \$860 plus postage, or \$929, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 91 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-512-1800
Assistance with public subscriptions	202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche	202-512-1800
Assistance with public single copies	1-866-512-1800 (Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	FRSubscriptions@nara.gov
Phone	202-741-6000

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: <https://www.gpo.gov/frsubs>.



Contents

Federal Register

Vol. 91, No. 25

Friday, February 6, 2026

Agricultural Marketing Service

PROPOSED RULES

Modification of Handling Regulations:

Kiwifruit Grown in California and Imported Kiwifruit,
5365–5368

Agriculture Department

See Agricultural Marketing Service

See Food Safety and Inspection Service

See Forest Service

See The U.S. Codex Office

Bureau of Consumer Financial Protection

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 5436–5437

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Annual Business Survey, 5425–5426

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 5480–5482

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
ACF Performance Progress Report, ACF–OGM–SF–PPR–
B, 5482–5483
ORR-6 Performance Report, 5483–5484

Civil Rights Commission

NOTICES

Hearings, Meetings, Proceedings, etc.:
New Jersey Advisory Committee, 5425

Coast Guard

RULES

Drawbridge Operations:

Old Brazos River, Brazoria County, TX, 5317–5318

San Bernard River, Brazoria County, TX, 5316–5317

Safety Zone:

Annual Fireworks Displays and Other Events in the
USCG Heartland District, 5318

Chicago Sanitary and Ship Canal, Chicago, IL, 5320

Lower Mississippi River, Mile Marker 94 to 97 Above
Head of Passes, New Orleans, LA, 5320–5321

Saginaw River, Bay City, MI, 5318–5320

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled

NOTICES

Procurement List; Additions and Deletions, 5434–5436

Commodity Futures Trading Commission

PROPOSED RULES

Event Contracts; Withdrawal, 5386–5387

Defense Department

RULES

Medical Billing for Healthcare Services Provided by
Department of Defense Military Medical Treatment
Facilities to Civilian Non-Beneficiaries, 5303–5316

NOTICES

Arms Sales, 5437–5455

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and
Promulgations:

California; Heavy-Duty Vehicle Inspection and
Maintenance Program, 5325–5351

Nevada; Regional Haze State Implementation Plan for the
Second Implementation Period, 5321–5325

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and
Promulgations:

Pennsylvania; Proposed Revision to Philadelphia Gas
Works, Richmond Plant Reasonably Available
Control Technology Plan Under the 1997 8-Hour
Ozone National Ambient Air Quality Standards,
5398–5400

US Ecology Nevada, Inc. High Mercury Subcategory Wastes
Land Disposal Restrictions Variance, 5400–5408

NOTICES

Environmental Impact Statements; Availability, etc., 5474
Request for Information:

Hazardous Waste Electronic Manifest Program; Public
Input on Charge Questions to the e-Manifest
Advisory Board and on a Potential Topics of e-
Manifest System Industry Users Conference, 5473–
5474

Requests for Nominations:

Hazardous Waste Electronic Manifest System Advisory
Board, 5472–5473

Executive Office for Immigration Review

RULES

Appellate Procedures for the Board of Immigration Appeals,
5267–5278

Farm Credit System Insurance Corporation

NOTICES

Hearings, Meetings, Proceedings, etc.:
Board of Directors, 5475

Federal Aviation Administration**RULES**

Airspace Designations and Reporting Points:

Beeville, TX, 5289–5290

Benton Harbor, MI, 5288–5289

Eastern United States; Correction, 5287–5288

South Bend, IN, 5285–5287

Airworthiness Directives:

Textron Aviation, Inc. (Type Certificate Previously Held by Cessna Aircraft Company) Airplanes, 5283–5285

PROPOSED RULES

Airworthiness Directives:

Dassault Aviation Airplanes, 5368–5378, 5381–5384

Rolls-Royce Deutschland Ltd and Co KG Engines, 5378–5381

The Boeing Company Airplanes, 5384–5386

NOTICES

Request to Release Property:

Asheville Regional Airport, Fletcher, NC, 5549–5550

Federal Deposit Insurance Corporation**NOTICES**

Termination of Receiverships, 5475

Updated Listing of Financial Institutions in Liquidation, 5475

Federal Energy Regulatory Commission**RULES**

Implementation of the Executive Order Entitled “Zero-Based Regulatory Budgeting to Unleash American Energy”; Correction, 5290–5291

NOTICES

Application:

Lewis Ridge Pumped Storage, LLC, 5459–5460

Combined Filings, 5455–5462, 5466–5472

Environmental Assessments; Availability, etc.:

Nueva Era Dos, LLC; Proposed Nueva Era Dos Pipeline Project, 5465–5466

Environmental Impact Statements; Availability, etc.:

FirstLight MA Hydro LLC, Northfield Mountain LLC, The Turners Falls Hydroelectric and Northfield Mountain Pumped Storage Projects, 5469

Great River Hydro, LLC, Vernon, Bellows Falls, and Wilder Hydroelectric Projects, 5462–5463

Tennessee Gas Pipeline Company, LLC, Southern Natural Gas Company, LLC, and Elba Express Company, LLC; Proposed Mississippi Crossing Project and South System Expansion 4 Project, 5463–5465

Environmental Issues:

Columbia Gas Transmission, LLC, Proposed Southeast Virginia Energy Storage Project; Cancellation of Public Scoping Session, 5462

Institution of Section 206 Proceeding and Refund Effective Date:

DCR Transmission, L.L.C., 5456

Staff Attendance:

North American Electric Reliability Corp. Planning and Operational Studies Drafting Teams Meetings, 5468–5469

Federal Highway Administration**NOTICES**

Buy America Waiver, 5550–5551

Federal Housing Finance Agency**RULES**

Fair Lending, Fair Housing, and Equitable Housing Finance Plans, 5278–5283

Federal Mine Safety and Health Review Commission**NOTICES**

Meetings; Sunshine Act, 5476

Federal Motor Carrier Safety Administration**NOTICES**

Exemption Application:

Application for Employment; CloudTrucks, LLC, 5554–5555

Hours of Service of Drivers; Colorado Huntsman Transport, Inc., 5553–5554

Qualification of Drivers; Commercial Vehicle Safety Alliance, 5551–5553

Federal Reserve System**NOTICES**

Change in Bank Control:

Acquisitions of Shares of a Bank or Bank Holding Company, 5476

Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 5476–5477

Federal Trade Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 5477

Proposed Consent Order:

Sevita and BrightSpring, 5477–5480

Food and Drug Administration**RULES**

Listing of Color Additives Exempt from Certification:

Beetroot Red, 5295–5299

Spirulina Extract, 5291–5295

New Animal Drugs:

Approval of Applications; Withdrawal of Approval of Application; Change of Sponsor; Change of Sponsor Address, 5299–5303

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Expedited Programs for Serious Conditions-Accelerated Approval of Drugs and Biologics, 5491–5494

Final Debarment Order:

Matthew Teltser, 5495–5497

Paul Zachary Lamberty, 5489–5491

Guidance:

E22 General Considerations for Patient Preference Studies; International Council for Harmonisation, 5484–5485

Medical Devices:

Exemptions from Premarket Notification: Class II Devices, 5485–5489

Patent Extension Regulatory Review Period:

Alfapump, 5500–5502

Aurora EV-ICD, 5497–5498

Beqvez, 5499–5500

Cobenfy, 5494–5495

Food Safety and Inspection Service**NOTICES**

2026 Rate Changes for the Basetime, Overtime, Holiday, Laboratory Services, and Export Application Fees, 5421–5423

Foreign-Trade Zones Board**NOTICES**

Proposed Production Activity:

Eastman Chemical Co., Foreign-Trade Zone 204,
Kingsport, TN, 5426

Intel Foundry Corp., Foreign-Trade Zone 110, Rio Rancho
and Albuquerque, NM, 5426–5427

Forest Service**PROPOSED RULES**

Project-Level Predecisional Administrative Review Process,
5387–5398

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Federal Excess Personal Property and Firefighter Property
Program Administration, 5424

Health and Human Services Department

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

Health Resources and Services Administration**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Behavioral Health Integration Evidence Based Telehealth
Network Program Integration Telehealth Evidence
Collection Tool, 5502–5503

Homeland Security Department

See Coast Guard

See U.S. Customs and Border Protection

Indian Affairs Bureau**NOTICES**

Documented Petition for Federal Acknowledgment as an
American Indian Tribe, 5508–5509

Indian Gaming:

Approval by Operation of Law of the Amendment to the
Iowa Tribe of Kansas and Nebraska—Kansas Gaming
Compact, 5509

Approval by Operation of Law of the First Amendment to
the Tribal-State Gaming Compact between the State
of California and the Sycuan Band of the Kumeyaay
Nation, 5508

Approval by Operation of Law of the Sixth Amendment
to the Tribal-State Compact for Class III Gaming
between the Lummi Nation and the State of
Washington, 5508

Interior Department

See Indian Affairs Bureau

See Land Management Bureau

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,
or Reviews:

Acetone from Belgium, Singapore, the Republic of South
Africa, the Republic of South Korea, and Spain,
5432–5433

Collated Steel Staples from the People's Republic of
China, 5431–5432

Oleoresin Paprika from India, 5427–5429

Sales at Less Than Fair Value; Determinations,
Investigations, etc.:

Certain Monomers and Oligomers from the Republic of
Korea, 5429–5431

International Trade Commission**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,
or Reviews:

Fiberglass Door Panels from China, 5510–5512

Float Glass Products from China and Malaysia, 5510

Justice Department

See Executive Office for Immigration Review

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Campus Program Grantee Needs and Progress Assessment
Tool, 5513

Data Security Requirements for Accessing Confidential
Data, 5513–5515

Proposed Consent Decree:

CERCLA, 5512–5513

Labor Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Labor Standards for Federal Service Contracts, 5515

Land Management Bureau**NOTICES**

Alaska Oil and Gas Lease Sale Lease Sale:

2026 National Petroleum Reserve, 5509–5510

National Institutes of Health**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Regular Clearance for Autism Spectrum Disorder
Research Portfolio Analysis (National Institute of
Mental Health), 5504–5505

Hearings, Meetings, Proceedings, etc.:

Center for Scientific Review, 5503–5505

National Heart, Lung, and Blood Institute, 5503

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Fisheries off West Coast States:

Pacific Coast Groundfish Fishery; Pacific Coast
Groundfish Fishery Management Plan; Fixed Gear
Marking and Entanglement Risk Reduction, 5408–
5418

NOTICES

Hearings, Meetings, Proceedings, etc.:

Mid-Atlantic Fishery Management Council, 5433–5434

National Science Foundation**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 5515–5518

Nuclear Regulatory Commission**NOTICES**

Consideration of Approval of Transfer of Control of
License:

International Isotopes Fluorine Products, 5518–5521

Meetings; Sunshine Act, 5518

Staff Assessment of a Proposed Amendment to the Agreement Between the Nuclear Regulatory Commission and the State of Wyoming, 5521–5526

Personnel Management Office

RULES

Improving Performance, Accountability and Responsiveness in the Civil Service, 5580–5657

PROPOSED RULES

Suitability Action Appeals, 5352–5365

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
OPM E-File System, 5526–5527

Postal Regulatory Commission

NOTICES

New Postal Products, 5527

Presidential Documents

PROCLAMATIONS

Special Observances:

National Black History Month (Proc. 11008), 5659–5662

ADMINISTRATIVE ORDERS

Burma; Continuation of National Emergency (Notice of February 3, 2026), 5663

Railroad Retirement Board

NOTICES

Meetings; Sunshine Act, 5527–5528

Securities and Exchange Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 5544–5547

Order:

ICE Clear Credit LLC, 5528–5544

Small Business Administration

NOTICES

Disaster Declaration:

California, 5547–5548

Surrender of License of Small Business Investment Company:

Norwest Strategic Capital, L.P., 5548

State Department

NOTICES

Private Sector Participation in Domestic and International Events on Spaceflight Safety, Responsible Practices, and Commercial Space, 5548–5549

Surface Transportation Board

NOTICES

Materials Due to be Submitted during the Federal Government Shutdown, 5549

The U.S. Codex Office

NOTICES

Hearings, Meetings, Proceedings, etc.:

Codex Alimentarius Commission; Codex Committee on Methods of Analysis and Sampling, 5419–5420

Codex Alimentarius Commission; Codex Committee on Residues of Veterinary Drugs in Foods, 5420

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

Treasury Department

See United States Mint

U.S. Customs and Border Protection

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

International Mail Duty Worksheet, 5505–5508

United States Mint

NOTICES

Hearings, Meetings, Proceedings, etc.:

Citizens Coinage Advisory Committee, 5555

New and Updated Prices for United States Mint Numismatic Products, 5556

United States Sentencing Commission

NOTICES

Sentencing Guidelines for United States Courts, 5556–5576

Veterans Affairs Department

NOTICES

Implementation of Section 402 of Title IV of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act, 5576–5578

Separate Parts In This Issue

Part II

Personnel Management Office, 5580–5657

Part III

Presidential Documents, 5659–5663

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR**Proclamations:**

11008.....5661

Administrative Orders:**Notices:**

Notice of February 3,
2026 5663

5 CFR

210.....5580
212.....5580
213.....5580
302.....5580
432.....5580
451.....5580
537.....5580
575.....5580
752.....5580

Proposed Rules:

731.....5352

7 CFR**Proposed Rules:**

920.....5365
944.....5365

8 CFR

1003.....5267
1208.....5267
1240.....5267

12 CFR

1293.....5278

14 CFR

39.....5283
71 (4 documents) ...5285, 5287,
5288, 5289

Proposed Rules:

39 (6 documents) ...5368, 5371,
5375, 5378, 5381, 5384

17 CFR**Proposed Rules:**

40.....5386

18 CFR

157.....5290

21 CFR

73 (2 documents) 5291, 5295
516.....5299
520.....5299
522.....5299
529.....5299
556.....5299
558.....5299

32 CFR

220.....5303

33 CFR

117 (2 documents) 5316,
5317
165 (4 documents) 5318,
5320

36 CFR**Proposed Rules:**

218.....5387

40 CFR

52 (2 documents) 5321, 5325

Proposed Rules:

52.....5398
268.....5400

50 CFR**Proposed Rules:**

660.....5408

Rules and Regulations

Federal Register

Vol. 91, No. 25

Friday, February 6, 2026

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

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

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

[Docket No. EOIR–26–AB37; Dir. Order No. 02–2026]

RIN 1125–AB37

Appellate Procedures for the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review (“EOIR”), Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule (“IFR”) amends Department of Justice (“Department” or “DOJ”) regulations to streamline administrative appellate review by the Board of Immigration Appeals (“Board” or “BIA”) of decisions by Immigration Judges by making review of such decisions on the merits discretionary, by setting appropriate times for briefing in cases that are reviewed on the merits, and by streamlining other aspects of the appellate process to ensure timely adjudications and avoid adding to the already sizeable backlog at the Board. Additionally, the Department is making various technical and non-substantive changes to its regulations.

DATES:

Effective date: This IFR is effective March 9, 2026.

Comments: Electronic comments must be submitted, and written comments must be postmarked or otherwise indicate a shipping date on or before March 9, 2026. The electronic Federal Docket Management System at <https://www.regulations.gov> will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit your comments,

identified by the agency name and reference RIN 1125–AB37 or EOIR Docket No. EOIR–26–AB37, by one of the two methods below.

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

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

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule; explain the reason for any recommended change; and include data, information, or authority that supports each recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at <https://www.regulations.gov>. Such information includes personally identifying information (such as your name,

address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONALLY IDENTIFYING INFORMATION” in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You also must prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <https://www.regulations.gov>.

Personally identifying information located as set forth above will be placed in the agency’s public docket file but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments 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>. To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

II. Legal Authority

The Department issues this IFR pursuant to section 103(g) of the Immigration and Nationality Act (“INA” or “the Act”), 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 (“HSA”), Public Law 107–296, 116 Stat. 2135 (as amended). The HSA provides that EOIR exists within DOJ and that it shall be “subject to the direction and regulation of the Attorney General” under section 103(g) of the INA, 8 U.S.C. 1103(g). Further, under the HSA, the Attorney General retains authority to “establish such regulations, . . . issue such instructions, review

such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out” the Attorney General’s authorities under the INA. HSA 1102, 116 Stat. at 2273–74; INA 103(g)(2), 8 U.S.C. 1103(g)(2). Those authorities include conducting removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (“section 240 removal proceedings”).

III. Background

A. General Regulatory Authority of the Board

In 1940, the Immigration and Naturalization Service (“INS”) and its functions were transferred to the Department, to be “administered under the direction and supervision of the Attorney General.” See Reorganization Plan No. V, 5 FR 2223 (June 14, 1940). Shortly thereafter, the Attorney General delegated various powers and authorities to the Board, or, as it was then known, the Board of Review of the INS, including ordering deportation after proceedings and considering appeals of decisions in specific types of cases.¹ See Order No. 3888, Delegation of Powers and Definition of Duties, 5 FR 2454, 2454–55 (July 3, 1940). In January 1983, a reorganization consolidated Immigration Judges and the Board into the newly created EOIR in order to “streamlin[e] the Department’s management of this important function and minimiz[e] mission disparities within the INS.” Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 FR 2931, 2931 (Jan. 29, 1987) (explaining the 1983 reorganization).

Notably, since its inception as a component of the Department, the Board’s appellate authorities have been delegated by the Attorney General and delineated by regulation, rather than by statute. See, e.g., 8 CFR 1003.1(a)(1) (“The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General’s delegates in the cases that come before them.”); 8 CFR 1003.1(d)(1) (“The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it.”); *Kucana v. Holder*, 558 U.S. 233, 239 (2010) (“As adjudicator in immigration cases, the Board exercises

authority delegated by the Attorney General.”).²

Through regulation, the Attorney General has provided for appellate review by the Board of multiple case types, including decisions of Immigration Judges in exclusion, deportation, removal, asylum-only, and withholding-only proceedings; carrier fines; certain immigrant visa petition decisions by the Department of Homeland Security (“DHS”) under sections 204 and 205 of the INA, 8 U.S.C. 1154, 1155; applications for the exercise of discretion under section 212(d)(3) of the INA, 8 U.S.C. 1182(d)(3); decisions on applications for adjustment of status and rescission of adjustment of status; decisions relating to Temporary Protected Status; determinations related to bond, parole, or detention of an alien; and disciplinary proceedings involving practitioners or recognized organizations. See 8 CFR 1003.1(b).

To adjudicate such cases, the Attorney General has also, through regulation, provided the Board with multiple adjudicatory options, including summary dismissal, affirmance without opinion (“AWO”), or decision by a single Appellate Immigration Judge, a panel of three Appellate Immigration Judges, or en banc. See, e.g., 8 CFR 1003.1(a)(5), (d)(2), (e)(2)–(6). Procedures like AWO and summary dismissal were introduced to address significant appeal backlogs and have been upheld by Federal circuit courts as being well within the Department’s authority. See, e.g., Executive Office for Immigration Review; Board of Immigration Appeals; Streamlining, 64 FR 56135, 56137–38 (Oct. 18, 1999) (AWO rule detailing the time-consuming appeals process and the need for more efficient adjudication measures); *Albathani v. INS*, 318 F.3d 365, 377 (1st Cir. 2003) (holding that “[p]romulgation of the AWO regulations is within the power of the [agency]” and the Board “can adopt, without further explication, the IJ’s opinion”); *Singh v. Gonzales*, 416 F.3d 1006, 1015 (9th Cir. 2005) (holding that the petitioner “has not established that the BIA’s regulations—authorizing summary dismissal for failure to either file a brief or specify the grounds for appeal—violated his due process rights”).

In line with these long-standing procedures, the Department is issuing this IFR to amend its summary

dismissal procedures to better address lengthy appeal backlogs at the Board, as detailed in Section IV.A of this preamble.

B. History of Measures To Increase Board Efficiency

Over time the Department has adopted measures to streamline Board review, especially when appeal receipts outpaced appeal adjudications leading to backlogs. In 1999, after a more than 9-fold increase in annual appeal and motion receipts over the course of 14 years, the Department adopted streamlining measures with four goals: (1) promoting uniformity in dispositions by Immigration Judges by providing authoritative guidance in high-quality appellate decisions; (2) deciding all incoming cases in a timely and fair manner; (3) assuring that individual cases are decided correctly; and (4) eliminating its backlog of cases. 64 FR 56136 (“In 1984, the Board received fewer than 3,000 new appeals and motions. In 1994, it received more than 14,000 new appeals and motions. In 1998, in excess of 28,000 new appeals and motions were filed.”). To do so, the Board limited the use of three-member panels to review appeals and allowed for AWO by a single Board member in specific circumstances. *Id.*

The streamlining process undertaken by the Board proved a success, leading to a 50 percent increase in overall Board productivity in fiscal year 2001.

Operations of the Executive Office for Immigration Review (EOIR): Hearing Before the Subcomm. on Immigr. and Claims of the H. Comm. On the Judiciary, 107th Cong., 2d Sess. 48 (2002) (testimony of Kevin Rooney, Director, EOIR). The initiative was also assessed favorably by an external auditor. Arthur Andersen & Company, *Board of Immigration Appeals (BIA) Streamlining Pilot Project Assessment Report* (Dec. 13, 2001).

In 2002, the Department published a final rule that, while maintaining the basic AWO process, mandated the use of AWO in any case that met the regulatory threshold criteria. See Board of Immigration Appeals: Procedural Reforms To Improve Case Management, 67 FR 54878 (Aug. 26, 2002). Compare 8 CFR 3.1(a)(7)(ii) (2000) (providing that a single Board member “may” affirm without opinion), with 8 CFR 1003.1(e)(4) (2003)³ (providing that a

¹ “The Board has existed, in one form or another and by one name or another, since the early days of effective immigration law enforcement in this country.” Maurice A. Roberts, *The Board of Immigration Appeals: A Critical Appraisal*, 15 San Diego L. Rev. 29, 30 (1977) (retired Board Chairman discussing the Board’s origins and development).

² Indeed, the INA mentions the Board in one lone subparagraph where it provides that a removal order becomes final when it is affirmed by the Board or when the period for seeking Board review has expired. INA 101(a)(47)(B), 8 U.S.C. 1101(a)(47)(B).

³ In 2003, the Attorney General redesignated the previous regulations in 8 CFR part 3, relating to EOIR, as 8 CFR part 1003 in connection with the abolition of the former INS and the transfer of its responsibilities to DHS. See Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824 (Feb. 28, 2003). Under the HSA, EOIR

single Board member “shall” affirm without opinion). Under the 2002 rule, an AWO was issued if the Board member concluded that “the result reached in the decision under review was correct,” that any errors in the decision were “harmless or nonmaterial,” and that either the issues on appeal are “squarely controlled” by precedent and do not present a novel factual scenario that requires a decision to apply precedent or are not so substantial as to warrant issuance of a written opinion by the Board. 8 CFR 1003.1(e)(4)(i) (2003).

Although these changes initially helped the Board adjudicate more cases overall, their impact on how timely and efficiently the Board adjudicated individual cases is less clear. As the Department’s Office of Inspector General (“DOJ OIG”) found in 2012, EOIR did not track all Board appeals the same way and used different measures rather than simple case processing times to track timely adjudication. *See* DOJ OIG, *Management of Immigration Cases and Appeals by the Executive Office for Immigration Review* (Oct. 2012), <https://oig.justice.gov/reports/2012/e1301.pdf> [<https://perma.cc/TPZ8-47JC>]. For example, “[d]epending on the type of review—one or three board members—EOIR counts the appeal processing time from different starting points,” and “[t]hese different starting points significantly skew the reported achievement of its completion goals for appeals and impede EOIR’s effective management of the appeals process.” *Id.* at 50. As a result, the case processing times reported by EOIR did not accurately reflect the complete case processing times for an appeal. *Id.* at 49 (“While EOIR’s method of calculation showed an average of 54 days to process an appeal under the one-member goal and an average of 76 days under the three-member goal, the entire time to process the appeals averaged 372 and 361 days, respectively.”). Moreover, EOIR declined to implement the DOJ OIG’s recommendation to “improve its collecting, tracking, and reporting of BIA appeal statistics to accurately reflect actual appeal processing times.” *Id.* at 50. Additionally, despite a regulatory command to do so, *see* 8 CFR 1003.1(e)(8)(v), the Chief Appellate Immigration Judge declined until 2019 to both provide notice “if a Board member consistently fails to meet the assigned deadlines for the disposition of appeals” and to “prepare a report assessing the timeliness of the

disposition of cases by each Board member on an annual basis”—and then declined again to do so between 2021 and 2024. *See generally* EOIR, *Policy Memorandum 25–04, Cancellation of Policy Memorandum 21–16 2 & n.2* (Jan. 27, 2025), <https://www.justice.gov/eoir/media/1386546/dl?inline> [<https://perma.cc/NWE9-V7EN>].

Notwithstanding the reforms of the early 2000s, due to “gross mismanagement and poor leadership at the Board,” by 2019, the Board’s case management system had become “dysfunctional.” *See id.* at 2.⁴ As a result, on August 26, 2020, the Department published a notice of proposed rulemaking (“NPRM” or “proposed rule”) that proposed to amend EOIR’s regulations to address the Board’s backlog. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 52491, 52491 (Aug. 26, 2020) (“Appellate Procedures NPRM”). The Appellate Procedures NPRM explained that changes to various procedures were necessary due to significant increases in the Board’s backlog such that the Department needed “to again review the BIA’s regulations to reduce any unwarranted delays in the appeals process and to ensure the efficient use of BIA and EOIR resources.” *Id.* at 52492.

Among other changes, the Appellate Procedures NPRM proposed: (1) simultaneous briefing schedules for both detained and non-detained appeals before the Board; (2) shortening the reply brief deadline; (3) limiting briefing extensions; (4) harmonizing the 90- and 180-day Board adjudication timelines to both start from when the record is complete; (5) limiting the Chief Appellate Immigration Judge’s ability to hold a group of cases while awaiting certain outside actions; and (6) removing the process for Immigration Judge review of proceeding transcripts. *See* 85 FR 52491. The Department received 1,287 comments during the 30-day comment period.⁵

⁴ Although these reforms were initially coupled with a reduction in the number of authorized positions on the Board from 23 to 11 Appellate Immigration Judges, between 2006 and 2024, the Department subsequently expanded the number of authorized positions to 28 Appellate Immigration Judges. *See generally* Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15526 (Apr. 14, 2025). As before, a larger Board did not translate into a more efficient Board, leading to a reduction in size to 15 authorized Appellate Immigration Judge positions in 2025. *Id.* at 15526–27. Additionally, also as before, that reduction is being coupled with procedural reforms to the Board’s procedures as represented by the instant rulemaking.

⁵ The Department posted 1,284 of the comments received for public review. The Department did not

On December 16, 2020, the Department published a final rule, responding to comments received during the notice-and-comment period and adopting the regulatory language proposed in the Appellate Procedures NPRM with minor changes. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (Dec. 16, 2020) (“Appellate Procedures Final Rule”). The Appellate Procedures Final Rule’s effective date was January 15, 2021, but the rule was preliminarily enjoined on March 10, 2021, before its measures were implemented fully. *See Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919 (N.D. Cal. 2021).

On September 8, 2023, after reconsidering the Appellate Procedures Final Rule, including the comments received during that rulemaking and the issues identified in the *Centro Legal de la Raza* litigation as well as litigation in *Catholic Legal Immigr. Network, Inc. v. EOIR*, No. 21–00094, 2021 WL 3609986 (D.D.C. Apr. 4, 2021), the Department published an NPRM proposing to remove the preliminarily enjoined regulatory language codified by the Appellate Procedures Final Rule, with certain exceptions, as well as proposing standards for Immigration Judges and Appellate Immigration Judges to consider when adjudicating requests for the administrative closure or termination of proceedings. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 88 FR 62242 (Sept. 8, 2023).

The Department finalized that rule in May 2024. *See* Efficient Case and Docket Management in Immigration Proceedings, 89 FR 46742 (May 29, 2024) (“ECDM Final Rule”). As a result, the relevant regulatory provisions of the Appellate Procedures Final Rule that are further addressed in this IFR were rescinded, and the relevant regulatory text was generally returned to its pre-Appellate Procedures Final Rule baseline. *See id.* 46742. Notably, neither the NPRM nor the final rule addressed the efficiency reasons the Department provided for those measures in the Appellate Procedures Final Rule. Indeed, despite the fact that the Board’s backlog continued to grow, the 2024 rule enacted no procedures aimed at increasing case completions.

post three of the comments received because they were either non-substantive or duplicates of other comments that were posted.

(including the Board and the Immigration Judges) remains under the authority of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g).

IV. Reforms To Improve Appeal Processing

As described in Section III.B of this preamble, until 2021, with various amounts of success, the Department has instituted measures to address increasing case receipts by the Board and the backlog that has accrued when the Board has been unable to keep up with them. However, since 2021, despite a rapidly growing backlog, the only regulatory measure taken to increase case completions was to further increase the number of authorized Board members to 28. *See Expanding the Size of the Board of Immigration Appeals*, 89 FR 22630 (Apr. 2, 2024).⁶ As the Attorney General recently explained when decreasing the size of the Board to 15 authorized members,

While the number of Board members authorized by regulation has increased by 13 since 2015, the number of cases completed annually by Board members has exceeded the total number completed in 2015 only three years since then, and the current projection for Fiscal Year 2025 is that completions will be less than in Fiscal Year 2015. . . . In short, the data available do not conclusively demonstrate that the increased Board size will lead to increased case adjudications.

Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15526 (Apr. 14, 2025).⁷

Indeed, between fiscal year 2015 and the end of fiscal year 2025, the Board's pending case load increased more than five-fold—from 37,285 pending appeals to 202,946 pending appeals. EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), <https://www.justice.gov/eoir/media/1344986/dl?inline> [<https://perma.cc/88C5-MU4N>]. The Board is at

⁶ Indeed, instead of defending appeal processing reforms EOIR attempted to adopt in the Appellate Procedures Final Rule, as explained in Section III.B of this preamble, those reforms were removed from EOIR's regulations without addressing or mentioning the Board's pending caseload. Moreover, prior Board leadership mismanaged the existing Board processes, significantly contributing to inefficiencies and the growing backlog. *See EOIR, Policy Memorandum 25–04, Cancellation of Policy Memorandum 21–16* (Jan. 27, 2025), <https://www.justice.gov/eoir/media/1386546/dl?inline> [<https://perma.cc/NWE9-V7EN>].

⁷ The number of completions in fiscal year 2025 ultimately did exceed the number in fiscal year 2015, by a little over 1000. *See EOIR, Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), <https://www.justice.gov/eoir/media/1344986/dl?inline> [<https://perma.cc/88C5-MU4N>]. Nevertheless, the larger point was reinforced by the quarterly numbers. In the first quarter of fiscal year 2025, the Board completed 8,405 cases with 28 Appellate Immigration Judges. In the fourth quarter of fiscal year 2025, the Board completed 11,473 cases with between 10 and 13 Appellate Immigration Judges (plus 6 temporary Appellate Immigration Judges). In other words, the Board adjudicated considerably more cases with fewer Appellate Immigration Judges.

a point where, even were it to have additional resources and better management, without significant reforms, it would not be able to keep up with incoming filings while tackling the backlog in any meaningful way.

Given the unprecedented Board caseload, and the insufficiency of the currently available tools to manage it, the Department has reconsidered the Board's role as an appellate tribunal. The Board cannot—and does not need to—adjudicate every case on the merits with the tools at its disposal, including the ability for single Board members to issue an AWO. Thus, rather than require such adjudications, the Department is changing its regulations to provide the Board more flexibility in reviewing appeals. Instead, for appeals taken from decisions issued after this IFR becomes effective, as explained in Section IV.A of this preamble, the default will be summary dismissal unless a majority of current Board members vote to consider the appeal on the merits. And such dismissals will occur quickly—within 15 days of filing the appeal—allowing aliens to seek Federal court review expeditiously, rather than potentially waiting for years for a Board decision that in the vast majority of cases would affirm the underlying Immigration Judge decision.⁸ This change in procedure will allow the Board to focus its limited resources on adjudicating the more than 200,000 pending appeals and, going forward, on selecting decisions for review that present novel issues warranting the Board's attention.

The IFR will also change the deadline for filing an appeal with the Board from 30 to 10 days, except for cases involving certain asylum applications, as discussed in more detail in Section IV.B of this preamble. And, as explained in Sections IV.C and D of this preamble, the IFR adopts other measures previously adopted by the 2020 Appellate Procedures Final Rule, which were never fully operationalized, to streamline the processes for obtaining the parties' briefs and assembling the record on appeal.

These changes, individually and together, will streamline Board appellate review so that aliens receive timely final decisions and do not have to wait years to seek Federal court

review.⁹ They will also allow the Board to focus on addressing the backlog and, once it is clear, on providing meaningful review in cases requiring Board intervention.¹⁰

A. Appellate Review by the Board

The Department has determined that the immigration adjudicatory system would function more efficiently if the Board were given more control over its appellate docket by summarily dismissing all appeals—with two exceptions¹¹—unless a majority of the permanent Board members vote en banc to accept an appeal. Currently, unless subject to the existing, enumerated reasons for summary dismissal, the Board reviews all appeals on the merits even though there is no statutory

⁹ The Department has considered the potential impacts of these amendments individually and in context with the other amendments made by this rule on aliens and attorneys appearing before EOIR. The Department recognizes that this rule changes the status quo with respect to appeal processing. The Department believes that the benefits of this rule's streamlining efforts for the Government and for those with meritorious claims outweigh the potential for costs to those with non-meritorious claims who would have benefitted from the delay and whose appeals may be subject to summary dismissal under this IFR.

¹⁰ The Department recognizes that recent actions by Congress to increase the filing fees for Board appeals to \$900 may decrease the number of incoming appeals to the Board. *See One Big Beautiful Bill Act* ("OBBA"), Public Law 119–21, sec. 100013(d) & (e), 139 Stat. 72 (2025). However, the OBBA does not prohibit fee waivers for appeals, so the impact of the fee increase may be minimal in practice. Moreover, even if the impact were greater, the Department nevertheless believes that these reforms are necessary to provide EOIR the flexibility necessary to issue timely decisions on new appeals. In any event, EOIR's preliminary experience since the enactment of OBBA is that the fee increase has not appreciably affected the volume of appeals.

¹¹ The Board will continue to adjudicate all appeals under 8 CFR 1003.1(b)(7) and (14) on their merits unless subject to summary dismissal under the regulations in place prior to this IFR to provide an additional procedural safeguard for detained aliens. Such appeals are effectively the end of the process available to detained aliens given that there is no petition for review available from a Board's decision on a bond appeal. *See INA 242(a)(1)*, 8 U.S.C. 1252(a)(1) (allowing for petitions for review of final orders of removal). The Board will also continue to adjudicate appeals of decisions under 8 CFR 1003.1(b)(5) on certain actions related to immigrant visa petitions under section 204 and 205 of the INA, 8 U.S.C. 1154 and 1155, and under 8 CFR 1003.1(b)(6) on applications for the exercise of the discretionary authority contained in section 212(d)(3) of the INA, 8 U.S.C. 1182(d)(3), under existing procedures. Those cases are not yet fully amenable to electronic filing procedures and are also subject to special filing procedures in which the appeal is filed first with DHS and then routed to the Board by DHS. *See 8 CFR 1003.3.3(a)(2)*. For similar reasons, the Board's existing filing, briefing, and forwarding-the-record procedures will continue to apply to appeals from decisions of DHS officers. Such appeals make up only a small fraction of the Board's caseload, and any benefits from applying streamlined procedures to those appeals would be minimal.

⁸ Although the Board may remand a case for many reasons (e.g. to update background checks or in response to an alien's request for a remand to seek a new form of relief), it rarely sustains a party's appeal on the merits. Between October 1, 2023, and September 15, 2025, the Board sustained only 123 out of 55,065 case appeals (excluding interlocutory appeals, bond appeals, and appeals of motion to reopen decisions) on the merits. Thus, regardless of which party appeals, the Board generally agrees with the outcome of the decision below.

requirement for an appellate process or for all allowable appeals to receive a decision on the merits. *See Dia v. Ashcroft*, 353 F.3d 228, 237 (3d Cir. 2003) (en banc) (noting the “INA says nothing whatsoever regarding the procedures of an administrative appeal, or, for that matter, any other procedures employed by the BIA”). Although there is an explicit reference to the Board in section 101(a)(47)(B) of the INA, 8 U.S.C. 1101(a)(47)(B), that reference merely establishes when an order of removal becomes final, namely when the order is affirmed by the Board or the time for filing an appeal has expired. Nothing in that provision, however, requires the Board to adjudicate every appeal on its merits; to the contrary, it is well established that the Board may summarily dismiss an appeal without reaching the merits.¹² *See* 8 CFR 1003.1(d)(2); *accord Dia*, 353 F.3d at 237 (“[8 U.S.C. 1101(a)(47)(B)] says absolutely nothing about procedures to be employed by the BIA, or the right to, or manner of, review generally; it only speaks to review by the BIA and its ‘affirming’ the ‘order’ of deportation Based on the fact that § 1101(a)(47)(B) contains the only mention of the BIA in the INA, it seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General’s discretion.”).

Importantly, because a summary dismissal “shall constitute the final decision of the Board,” 8 CFR 1003.1(d)(2)(iii) (as amended by this IFR), the Board’s summary dismissal provisions—and this rule’s expansion of them—do not cause any difficulty for implementing the statute or other regulatory provisions, such as the statutory and regulatory provisions that govern when a removal order becomes final. *See* INA 101(a)(47)(B), 8 U.S.C. 1101(a)(47)(B); 8 CFR 1241.1 (setting forth when a removal order resulting from section 240 removal proceedings becomes final). When an appeal is summarily dismissed under the provisions added by this rule, the Department intends that the Immigration Judge’s decision become the final agency decision for purposes of Federal court review unless the Attorney General exercises discretion to

review under 8 CFR 1003.1(h). In any petition for review of a final removal order under section 242(a)(1) of the INA, 8 U.S.C. 1252(a)(1), the Department expects that the court of appeals would review the substance of the Immigration Judge’s decision as the basis for the final order. This view would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed.

Notably, the courts of appeals that have reviewed challenges to the Board’s prior streamlining process have uniformly concluded that aliens have no constitutional or statutory right to a particular form or manner of a Board decision. *See Zhang v. U.S. Dep’t of Justice*, 362 F.3d 155, 157–58 (2d Cir. 2004); *Yuk v. Ashcroft*, 355 F.3d 1222, 1229–32 (10th Cir. 2004); *Dia*, 353 F.3d at 242; *Denko v. INS*, 351 F.3d 717, 729–30 (6th Cir. 2003); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850–51 (9th Cir. 2003); *Khattak v. Ashcroft*, 332 F.3d 250, 252–53 (4th Cir. 2003); *Georgis v. Ashcroft*, 328 F.3d 962, 967 (7th Cir. 2003); *Mendoza v. U.S. Att’y Gen.*, 327 F.3d 1283, 1288–89 (11th Cir. 2003); *Albathani v. INS*, 318 F.3d 365, 376–77 (1st Cir. 2003). Indeed, it has long been the Department’s view that there is no statutory right or law requiring a particular form of decision or method of review before the Board. 67 FR 54883, 54888–90. Because the Board is established under the Attorney General’s regulations, she “is free to tailor the scope and procedures of administrative review of immigration matters as a matter of discretion.” 67 FR 54882 (citing, e.g., *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 524–25 (1978)); *see Vt. Yankee*, 435 U.S. at 524–25 (“administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties” (quoting *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 143 (1940))).

This change will allow the Board to focus on appeals with particularly novel or complex legal questions without becoming bogged down in mine-run or straightforward cases that may already be subject to being affirmed without an opinion or summarily affirmed. Indeed, due to years of mismanagement and the accretion of a sizeable backlog of cases, as discussed in Sections III.B and IV of this preamble,¹³ the Board largely

functions now as simply a vessel for further delay of the eventual resolution of an alien’s case. Further, the change would also help offset a peculiar asymmetry in immigration proceedings—i.e., aliens may seek Federal court review of Board decisions, but DHS cannot—by ensuring that aliens do not amplify any procedural advantages they have over the Government with additional opportunities to necessarily bring meritless appeals with attendant delays.

The Department recognizes that this IFR represents a notable procedural change to how the Board has operated; however, in recognition of that point, this change will apply only prospectively and not to appeals pending when the rule becomes effective. Instead, it will apply only to decisions otherwise subject to appeal that are issued by either an Immigration Judge or DHS on or after the rule’s effective date. Because there is no right to a merits adjudication of any appeal in the first instance, and because the rule does not change the process for aliens who submitted an appeal with the expectation of receiving a different process, this change will not undermine any reliance interests of either an alien or DHS. Indeed, there is no evidence that DHS initiates a case in immigration proceedings or an alien brings a claim for relief or protection from removal based on the availability of an appeal to the Board if they lose, nor is there any logical reason that either party would do so. And, to be clear, the change applies equally to appeals filed by both DHS and aliens, so neither side will be procedurally advantaged or disadvantaged by the change.¹⁴

eoir/media/1344986/dl?inline [https://perma.cc/88C5-MU4N].

¹⁴ The Department also does not expect this change to cause a significant increase in petitions for review filed with Federal Courts of Appeals, and there is no logical reason to expect this IFR to change parties’ behavior in that regard. For instance, cases that would have otherwise been decided by the Board in the alien’s favor cannot be reviewed by Federal courts anyway; so, the dismissal of such appeals under this IFR will have no impact on Federal court filings based on those cases. Similarly, aliens who would have previously petitioned for review of an adverse Board decision will still be expected to do so; so, again, the dismissal of such appeals under this IFR should have no impact on the net volume of appeals over time. Even if, as the Department believes, this change in the appeals process is unlikely to change the rate at which aliens petition courts of appeals for review of Board decisions, the Department acknowledges that the IFR’s goal is to increase the number of appeal decisions issued per year, which will potentially lead to an increase in the number of petitions for review filed per year. This potential does not outweigh the Department’s significant interest in timely adjudications.

¹² The Department also notes that at the time Congress enacted section 101(a)(47)(B) of the INA, 8 U.S.C. 1101(a)(47)(B), the Board’s regulatory scheme permitted summary dismissal of appeals. *See* 8 CFR 3.1(d)(1)–a, 103.3(a)(1)(v) (1996); Executive Office for Immigration Review; Rules of Procedures, 57 FR 11568, 11570, 11573 (Apr. 6, 1992). There is no evidence that Congress intended section 101(a)(47)(B) of the INA, 8 U.S.C. 1101(a)(47)(B), to displace that process.

¹³ Between fiscal year 2015 and the end of fiscal year 2025, the Board’s pending case load increased more than five-fold—from 37,285 pending appeals to 202,946 pending appeals. EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), <https://www.justice.gov/>

B. Time To File an Appeal With the Board

Prior to this IFR, individuals who wished to appeal a case to the Board typically had 30 days in which to do so. *See, e.g.,* 8 CFR 1003.38(b) (2025). However, that deadline is not set by statute, with one exception related to asylum applications at section 208(d)(5)(A)(iv) of the INA, 8 U.S.C. 1158(d)(5)(A)(iv). The Department has reconsidered the appeal timeline before the Board, and is now reducing the appeal period from 30 days to 10 days for all cases, except for those cases where the alien's asylum application was denied on grounds other than those specified in section 208(a)(2)(A), (B), or (C) of the INA, 8 U.S.C. 1158(a)(2)(A), (B), (C). Those three subparagraphs bar an alien from applying for asylum where: (1) the alien may be removed to a country other than their country of nationality pursuant to a bilateral or multilateral agreement commonly referred to as an Asylum Cooperative Agreement ("ACA"), INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A); (2) the alien cannot show by a preponderance of the evidence that his or her application has been filed within one year after the date of the alien's arrival in the United States, subject to narrow exceptions, INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B); or (3) the alien has previously applied for asylum and had such application denied, subject to narrow exceptions, INA 208(a)(2)(C), 8 U.S.C. 1158(a)(2)(C).¹⁵ *See* 8 CFR 1003.38(b).

¹⁵ In order to comply with the statute, the Department is retaining the 30-day appeal period for appeals involving the denial of an asylum application on grounds other than those specified in section 208(a)(2) of the INA, 8 U.S.C. 1158(a)(2). *See* INA 208(d)(5)(A)(iv), 8 U.S.C. 1158(d)(5)(A)(iv) (stating that "any administrative appeal [involving consideration of an asylum application] shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an [I]mmigration [J]udge under section 240, whichever is later"). However, where an alien is ineligible to apply for asylum due to the application of an ACA, failure to apply within one year of entry, or because he or she has previously been denied asylum, the Department is applying the 10-day appeal period in this IFR. The statute is clear that the asylum procedures in section 208(d) of the INA, 8 U.S.C. 1158(d)—including the 30-day administrative appeal period language in section 208(d)(5)(A)(iv) of the INA, 8 U.S.C. 1158(d)(5)(A)(iv)—only applies to asylum applications "filed under paragraph (a)." *See* INA 208(d)(1), 8 U.S.C. 1158(d)(1). In turn, paragraph (a)(1)'s general authority for aliens to apply for asylum can be barred by application of any of the three bars in paragraph (a)(2), each of which specify that paragraph (1) "shall not apply" to aliens subject to those bars. INA 208(a)(2)(A)–(C), 8 U.S.C. 1158(a)(2)(A)–(C). Therefore, when an application for asylum is denied based on one of the three bars in paragraph (a)(2), the alien is then barred from applying for asylum under paragraph (a)(1) and, as a result, the asylum procedures in subsection (d)—including the 30-day administrative

The Department is reducing the appeal period for a number of reasons. For example, with the Board's adoption of electronic filing in 2021, which allows parties to submit Notices of Appeal at any time of day from any location with internet access, removing concerns related to mail delays and the restrictions business hours create to meet filing deadlines, there is no operational need for it. Further, that deadline differs from other EOIR administrative appellate deadlines. *See, e.g.,* 28 CFR 68.54(a) (requiring an appeal to the Chief Administrative Hearing Officer be filed within 10 days of a decision of an Administrative Law Judge); *cf.* 8 CFR 1003.6(c)(1) (requiring DHS to file an appeal within 10 days of an Immigration Judge's order to maintain an automatic stay of a custody redetermination order pursuant to 8 CFR 1003.19(i)).

In short, there is no reason to maintain a 30-day appeal deadline (except for certain asylum appeals discussed in this section), and the Department, as a matter of policy, is electing to change the appeal filing deadline to 10 days in order to improve the efficient consideration of appeals and to harmonize appellate deadlines across the agency. *See* 28 CFR 68.54(a) (establishing a 10-day deadline for seeking review of an Administrative Law Judge's final order in certain categories of cases adjudicated by EOIR's Office of the Chief Administrative Hearing Officer). Again, this change will apply only prospectively to appeals of Immigration Judge decisions issued on or after the effective date of this IFR. Because there is no right to a merits adjudication of any appeal in the first instance—and because there is no evidence that an alien or DHS would make any decisions relating to their litigation of the case before the Immigration Judge based on the amount of time available to appeal a potential future adverse decision—this change will not undermine any reliance interests of either an alien or DHS. As with other changes, this change also applies equally to both DHS and aliens, so neither side will be procedurally advantaged or disadvantaged by the change.¹⁶

appeal period language specific to asylum applications—do not apply.

¹⁶ The Department acknowledges that some aliens proceed pro se before the Immigration Judge and may seek counsel after an adverse decision and that in those circumstances changing the deadline from 30 to 10 days, except for asylum appeals by aliens not barred from applying, may impact their ability to obtain counsel to file a Notice of Appeal. The Department notes that aliens in such a position have already had time to obtain counsel for their proceedings before the Immigration Judge.

C. Briefing

The IFR also standardizes the Board's briefing schedule for appeals filed directly with the Board to require simultaneous briefing within 20 days of the Board setting the schedule in all cases not summarily dismissed, with no reply briefs and limited extensions.

The Department acknowledges that requiring simultaneous briefing for both detained and non-detained cases is a departure from the current status quo, which was re-implemented by the ECDM Final Rule. *See* 89 FR 46743 (explaining that the ECDM Final Rule "recodifies longstanding [briefing] practices in place prior to the publication of [the Appellate Procedures] Final Rule and which have again been in use since the [Appellate Procedures] Final Rule was enjoined"). However, as has been borne out by the ever-expanding pending caseload, maintaining the status quo for briefing schedules does not promote the timely resolution of cases before the Board.¹⁷

Additionally, such aliens are advised of their appeal rights and the appeal deadline by the Immigration Judge and may file a Notice of Appeal without counsel. If the Board decides to consider the appeal, the alien will have had additional time to obtain counsel for that appeal. If instead their appeal is summarily dismissed, they may proceed to file a petition for review with a Federal court within 30 days of that dismissal, *see* INA 242(b)(1), 8 U.S.C. 1252(b)(1), providing them up to 55 days to obtain counsel. Nevertheless, the Department has considered the potential that the rule may impact some aliens' ability to obtain counsel for their appeal or petition for review. The Department believes that the interest in timely adjudications outweighs those potential concerns. Similarly, the Department recognizes that some aliens whose cases are subject to the 10-day appeal period in this IFR may seek counsel to assist with their appeals after they receive a removal order and that, for those aliens, decreasing the appeal period to 10 days may make it more difficult for them to find counsel. The Department also recognizes that if such aliens notice an appeal and obtain counsel after the 10-day period, they may not have an opportunity to submit briefing as their appeal may be summarily dismissed under this rule. The Department believes this population will be relatively small but has nevertheless considered the potential impact on such aliens' ability to obtain counsel for appeal. The Department believes that the benefits of the reforms in this rule outweigh that potential impact, especially given that such aliens would have had time prior to the removal order to seek the assistance of counsel. Additionally, the Department notes that the potential for dismissal before briefing is not new with this rule—even without it, the Board may summarily dismiss an appeal for multiple reasons, including if the Board is satisfied "that the appeal is filed for an improper purpose, such as to cause unnecessary delay" or because the Board believes "the appeal lacks an arguable basis in fact or in law." 8 CFR 1003.1(d)(2)(i)(D). Regardless, when considering whether to summarily dismiss an appeal, the Board will consider the entire record before it and come to an independent determination whether to consider the appeal on the merits or to summarily dismiss.

¹⁷ The Department also notes that the ECDM Final Rule did not persuasively address the basic question of why simultaneous briefing is

Rather, the Department now believes that for all cases not summarily dismissed—whether detained or non-detained—a “simultaneous briefing schedule provides both parties sufficient opportunity to address any issues needed to be resolved on appeal or to identify any reasons for opposing the appeal, while balancing the need to expeditiously resolve the case.” *Id.*

In the ECDM Final Rule, the Department also noted that “simultaneous briefing is appropriate in detained cases given the need for expeditious resolution of such cases implicating liberty interests.” *Id.* However, the Department no longer believes that expeditious resolution should be limited to detained cases but, rather, should be the default in all cases to promote finality in proceedings. *See Hernandez-Rodriguez v. Pasquarell*, 118 F.3d 1034, 1042 (5th Cir. 1997) (citing *Abudu v. INS*, 485 U.S. 94, 106–08 (1988)) (“Both the public and the Board have significant, cognizable interests in the finality of immigration proceedings.”). This is consistent with Congress’s repeated use of time limits in the INA to evince its clear intent for immigration proceedings to move expeditiously. *See, e.g.,* INA 208(d)(5)(A)(ii)–(iii), 8 U.S.C. 1158(d)(5)(A)(ii)–(iii) (time limits on asylum adjudications); INA 240(c)(6)–(7), 8 U.S.C. 1229a(c)(6)–(7) (time limits on motions to reopen and reconsider).

Currently, the Board operates a hodgepodge of briefing schedules with different time limits, depending on whether the case involves a detained alien and whether an extension is granted. The Board often accepts reply briefs, extending the time for briefing further, although in the Board’s experience, such reply briefs rarely, if ever, positively contribute to the arguments at issue. One standard schedule is more consistent, easier to administer, and precludes gamesmanship or manipulation by the parties, particularly by aliens seeking delay of the resolution of their cases. *Cf. INS v. Doherty*, 502 U.S. 314, 323 (1992) (“as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States”). Moreover, the Board already has the authority to set swifter briefing schedules than its current 21-day schedule, *see* 8 CFR 1003.3(c) (2025) (noting the general setting of a 21-day briefing schedule “unless a shorter period is specified by the

Board”), so the reduction by one day will not have a significant impact on the parties, particularly because the change is only applied prospectively.¹⁸

The IFR also limits extensions which, despite a putative policy disfavoring them, *see* EOIR Policy Manual, pt. III, ch. 4.7(c)(1) (last visited Jan. 30, 2026), <https://www.justice.gov/eoir/reference-materials/bia/chapter-4/7> [<https://perma.cc/66J6-RWQV>], became an expectation based on Board routine in recent years. The Department recognizes that unexpected circumstances do arise, however. Consequently, the IFR authorizes extensions in cases of exceptional circumstances, as defined by section 240(e)(1) of the INA, 8 U.S.C. 1229a(e)(1) (“The term ‘exceptional circumstances’ refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.”). In short, for exceptional circumstances beyond the control of a party, the Board retains authority to grant an extension.

The Department also recognizes that, because these briefing procedures will apply when the Board has not summarily dismissed the case, such cases may present important or novel issues for the Board to resolve on appeal. Thus, this rule does not preclude the Board from exercising its expertise to determine whether to request or accept additional briefing to resolve the appeal. *See* 8 CFR 1003.3(c) (“In its discretion, the Board may request supplemental briefing from the parties after the expiration of the briefing deadline.”); EOIR Policy Manual, pt. III, ch. 4.6(i) (last visited Jan. 30, 2026), <https://www.justice.gov/eoir/reference-materials/bia/chapter-4/6> [<https://perma.cc/2QPY-HB5N>] (discussing amicus curiae briefs); *see also* EOIR, *Agency Invitations to File Amicus Briefs* (Sept. 10, 2025), <https://www.justice.gov/eoir/amicus-briefs> [<https://perma.cc/6R64-8GAM>] (explaining that EOIR “occasionally invites members of the public to file amicus curiae briefs addressing issues of significance” and allowing members of the public to subscribe to receive such invitations).

D. Forwarding the Record on Appeal

The Department is also revising 8 CFR 1003.5 regarding the forwarding of the

record of proceedings in an appeal to reflect changing procedures and to provide maximum flexibility in ensuring the record is forwarded as quickly as possible. The present process in 8 CFR 1003.5(a) is largely unnecessary and only creates unwarranted delay. For instance, the current regulations allocate time for Immigration Judges to review and approve transcripts of their oral decisions. 8 CFR 1003.5(a). But this is not necessary because EOIR utilizes reliable digital audio recording technology that produces clear audio recordings and more accurate transcriptions, *see, e.g.,* Press Release, *EOIR Completes Digital Audio Recording Implementation* (Sept. 2, 2010), <https://www.justice.gov/sites/default/files/pages/attachments/2015/08/20/eoircompletesdar09022010.pdf> [<https://perma.cc/EMK4-QSY9>] (“This new system improves the quality of recordings and transcriptions through the use of more microphones throughout each courtroom.”), and the additional 7- or 14-day review period creates an unnecessary delay in the adjudication of appeals. Moreover, because errors should not be corrected during the review, *see, e.g., Mamedov v. Ashcroft*, 387 F.3d 918, 920 (7th Cir. 2004) (“[I]n general it is a bad practice for a judge to continue working on his opinion after the case has entered the appellate process”), because EOIR already has a procedure for the parties to address defective or inaccurate transcripts on appeal, EOIR Policy Manual, pt. III, ch. 4.2(f)(3) (last visited Jan. 30, 2026), <https://www.justice.gov/eoir/reference-materials/bia/chapter-4/2> [<https://perma.cc/U66Z-QP7P>], and because the Board may remedy defects through a remand for clarification or correction if necessary, 8 CFR 1003.1(e)(2), there is no operational reason for Immigration Judges to continue to review transcripts of their decisions solely for minor typographical errors. *Accord Witjaksono v. Holder*, 573 F.3d 968, 976 (10th Cir. 2009) (“When an alien follows the[] procedures [for redressing an incomplete transcript], the BIA is able to evaluate whether the ‘gaps [in the transcript] relate to matters material to [the] case and [whether] they materially affect [the alien’s] ability to obtain meaningful review.’ Moreover, if the BIA concludes that a defective transcript did not cause prejudice, these procedures create a record that facilitates the meaningful and effective judicial review to which a petitioner is entitled.” ((first alteration added) (internal citation omitted))).

appropriate for one set of cases but not another. Moreover, the Department notes that the Board continues to retain the discretion to request supplemental briefing in any case where it feels it would be appropriate. *See* 8 CFR 1003.3(c).

¹⁸ This change will only be applied to appeals of Immigration Judge decisions issued on or after the effective date of the IFR.

Further, such review also takes Immigration Judges away from their primary duty of adjudicating cases expeditiously and impartially, consistent with the law. See EOIR, *About the Office: EOIR Mission* (May 29, 2025), <https://www.justice.gov/eoir/about-office> [<https://perma.cc/9XQ7-65DC>] (“The primary mission of . . . EOIR[] is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation’s immigration laws.”); EOIR Policy Manual, pt. I, ch. 1.2(a) (last visited Jan. 30, 2026), <https://www.justice.gov/eoir/reference-materials/ic/chapter-1/2> [<https://perma.cc/X5WU-FV74>] (“Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act, federal regulations, and precedent decisions of the Board of Immigration Appeals and federal appellate courts.”). Finally, Federal courts have criticized the practice of Immigration Judges revising transcripts after an appeal has been filed. See *Mamedov*, 387 F.3d at 920. Accordingly, there is simply no reason to retain the requirement that Immigration Judges continue to review transcripts, and removing this requirement will also eliminate the possibility of the transcript being amended incorrectly, even inadvertently, after a decision has been rendered.

E. Other Changes

The Department is revising EOIR’s regulations at 8 CFR 1003.1(e)(8)(ii) and removing and reserving 8 CFR 1003.1(e)(8)(iii), two provisions that authorize the Chief Appellate Immigration Judge to either extend adjudication deadlines in particular cases or to hold cases based on a pending, potentially impactful action, either a new binding case decision or a new regulatory action. The former provision has no clear underlying rationale consistent with principles of good government and effective adjudication and simply provides a method for the Chief Appellate Immigration Judge to delay cases at whim, either to avoid applying established regulatory adjudicatory timeframes or to effectuate policy goals of delaying cases. In short, there is no persuasive reason to maintain the provision, and the Department is revising 8 CFR 1003.1(e)(8)(ii) accordingly. For similar reasons, the Department is removing and reserving 8 CFR 1003.1(e)(8)(iii). It is impractical because it requires predicting the outcomes of pending court cases; it has rarely, if ever, been used in practice;

and it allows the Chief Appellate Immigration Judge to delay cases based on personal legal assessment with little oversight or concern for the importance of prompt case adjudications.

The Department is revising various other provisions in 8 CFR 1003.6 and 1003.38 to make conforming changes based on the changes described above. It is also making technical amendments to 8 CFR 1003.38 to correct outdated regulatory cross-references.

Finally, the Department is making changes to 8 CFR 1003.1, 1003.18, 1003.42, 1003.55, 1208.31, 1208.35, and 1240.26 to change the term “noncitizen” to “alien” and the term “unaccompanied child” or “unaccompanied children” to “unaccompanied alien child” or “unaccompanied alien children”, as appropriate, in accordance with EOIR’s efforts to conform to statutory terminology. See *Designation of Temporary Immigration Judges*, 90 FR 41886–87 (Aug. 28, 2025).

F. Severability

To the extent that any portion of this rule is stayed, enjoined, not implemented, or otherwise held invalid by a court, the Department intends for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect. Each change may operate independently of the others and would be unaffected if any other part of the rule were enjoined.

V. Regulatory Requirements

A. Administrative Procedure Act

Notice and comment pursuant to the Administrative Procedure Act (“APA”) are unnecessary for at least two independent reasons.

First, this is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(A). Rules are procedural “if they are ‘primarily directed toward improving the efficient and effective operations of an agency.’” *AFL–CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (quoting *Mendoza v. Perez*, 754 F.3d 1002, 1022 (D.C. Cir. 2014)); see also *James V. Hurson Assocs. Inc., Inc. v. Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000) (procedural rules “may alter the manner in which the parties present themselves or their viewpoints to the agency”). This rule affects only the practices and procedures of the Board, and they are undoubtedly directed toward improving the efficient and effective operations of the Board.

To be sure, although any rule that “alter[s] the rights or interests of parties” is not “procedural,” *James V.*

Hurson, 229 F.3d at 280, there is no right to an appeal to the Board based on any particular timeframe nor is there a right to a specific briefing schedule or manner of consideration. Indeed, there is no clear statutory right to an appeal to the Board at all, and even if there were, there is no statutory right to file a brief in such appeal. Because the rule applies only prospectively, it cannot alter any parties’ interests either because there is no evidence that either DHS or an alien bases their choices in immigration proceedings on the future prospect of an appeal to the Board.

Rules that merely make “judgment[s] about what mechanics and processes are most efficient” are procedural even if they have “impacts on outcomes.” *JEM Broad. Co., Inc., v. FCC*, 22 F.3d 320, 328 (D.C. Cir. 1994). This IFR does no more than make such judgments. A rule streamlining Board procedures for adjudicating appeals, particularly when designed to effectuate the most efficient processes for such adjudications, is fairly seen as procedural in the sense of 5 U.S.C. 553(b)(A). Accordingly, as a rule of agency procedure—or practice—the IFR is exempt from the notice-and-comment procedures in 5 U.S.C. 553(b)(A).

Second, the requirements of 5 U.S.C. 553 do not apply to these regulatory changes because this rule involves a “foreign affairs function of the United States.” 5 U.S.C. 553(a)(1). Courts have held that this exception applies when the rule in question “clearly and directly involves a foreign affairs function.” *E.B. v. U.S. Dep’t of State*, 583 F. Supp. 3d 58, 63 (D.D.C. 2022) (cleaned up). In addition, although the text of the APA does not require an agency invoking this exception to show that such procedures may result in “definitely undesirable international consequences,” some courts have required such a showing. See *Rajah v. Mukasey*, 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted). This rule satisfies both standards.

This IFR is intended to facilitate EOIR’s ability to more effectively adjudicate the removability of millions of illegal aliens currently in the United States and to reach a final adjudication of removal more efficiently and quickly for those who have no valid claim to relief or protection in the United States. Improving the efficiency of EOIR proceedings will, in turn, create disincentives for aliens to enter the United States unlawfully in the future as they will no longer be able to rely on an expectation of significant delays in their proceedings, at least at the administrative appellate level. Another recent IFR issued in part by EOIR

spelled out clear reasons for invoking the foreign affairs exception to notice and comment under the APA, and nearly all of those reasons also apply to this IFR. *See* Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439, 27454–56 (June 27, 2025). Specifically, moving forward with actions like this IFR immediately will allow the United States Government to build on momentum with international partners to address shared challenges to border security and illegal immigration. The United States' border management strategy is predicated on the belief that migration is a shared responsibility among all countries in the region, and Executive Order 14150, *America First Policy Directive to the Secretary of State*, sets out the President's vision that "the foreign policy of the United States shall champion core American interests and always put America and American citizens first." 90 FR 8337 (Jan. 20, 2025). In this regard, the Administration is actively engaged in negotiations including wide-ranging discussions with foreign partners on matters related to border security, such as to reduce illegal immigration and advance security in the United States and the region. *See, e.g.*, 90 FR 27454–55 & nn.48–55 (discussing the Administration's efforts).¹⁹

For its foreign policy efforts to succeed in this regard, the United States must demonstrate its own willingness to put in place appropriate measures like this IFR that will allow EOIR to more effectively use available tools to disincentivize, prepare for, and respond to ongoing migratory challenges and illegal immigration. This IFR is one part of this Administration's efforts to reduce illegal immigration to the United States, by using all available tools under the INA to deter aliens from making the dangerous journey to the United States

and entering the country illegally. Such efforts will demonstrate to international partners the United States's commitment to addressing challenges related to deterring illegal migratory movements. Failing to address challenges related to illegal immigration and reduce delays in the removal process will likely have significant foreign affairs implications by creating incentives for large numbers of migrants to make the dangerous journey to the southern border of the United States through other countries, as occurred under the last Administration.²⁰ Therefore, delaying implementation of measures like this IFR to combat and deter illegal migration could create migratory challenges for foreign partners and undermine the momentum that this Administration has built with foreign partners towards addressing their shared migratory and border security challenges.

Moreover, the Administration is actively engaged in negotiations with other countries intended to address the large number of illegal aliens in the United States. These efforts also include coordination with other countries to support the Administration's efforts to encourage aliens to depart the United States voluntarily and return to their home countries.²¹ In sum, these actions indicate that the removal and voluntary return of aliens with no legal right to remain in the United States is a critical foreign policy objective of the United States.

Here too, for these foreign policy efforts to succeed, the United States must demonstrate that it is taking immediate action, including through measures like this IFR, to help achieve the purpose of these international efforts and negotiations: to streamline the removal process and encourage other countries to cooperate with the United States's efforts to remove illegal aliens and support the return of their citizens.

By reducing potential delays in adjudications, this IFR supports the Administration's efforts to reduce backlogs in removal proceedings and incentivize aliens to depart the United States voluntarily and return to their home country or to not come to the United States in the first instance.

Delaying measures like those adopted by this IFR would have undesirable consequences on the United States's ongoing foreign policy goals. Quite simply, if the United States is unable to demonstrate, through measures like this IFR, that it is committed to taking quick and robust action to remove aliens and encourage them to depart the United States, which depends on international cooperation, countries may be less inclined to engage with the United States on these ongoing efforts in the future.

Executive Order 14150 of January 20, 2025, *America First Policy Directive to the Secretary of State*, clearly sets out the President's vision that "the foreign policy of the United States shall champion core American interests and always put America and American citizens first." E.O. 14150, 90 FR 8337 (Jan. 20, 2025). In addition, the Secretary of State recently determined "that all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States" constitute a foreign affairs function of the United States under the APA. *Determination: Foreign Affairs Functions of the United States*, 90 FR 12200 (Mar. 14, 2025). In making this determination, the Secretary of State explained that "[s]ecuring America's borders and protecting its citizens from external threats is the first priority foreign affairs function of the United States" and noted that an unsecured border presents a range of threats to U.S. citizens, which can be eliminated or mitigated through the execution of the foreign affairs functions. *See id.* This rule's efforts to reduce inefficiencies, the appeal backlog, and the related perverse incentives for aliens to seek to come to the United States illegally will enable the United States to better achieve the total and efficient enforcement of U.S. immigration law and, as such, champion a core American interest in accordance with American foreign policy. *See id.*; 90 FR 8337. The rule thus represents an effort to engage in foreign affairs functions and is therefore exempt from traditional notice-and-comment procedures.

¹⁹ *See also* Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, 90 FR 30076 (July 8, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Relating to the Transfer of Nationals of Central American Countries to Guatemala, 90 FR 31670 (July 15, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests, 90 FR 42597 (Sept. 3, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador, 90 FR 51376 (Nov. 17, 2025); Agreement between the U.S. Department of Homeland Security and the U.S. Department of State and the Paraguayan National Commission for Stateless Persons and Refugees, 90 FR 60114 (Dec. 23, 2025).

²⁰ *See, e.g.*, Securing the Border, 89 FR 81156, 81186 (Oct. 7, 2024) (noting that when there is a strain on resources due to a large number of aliens crossing the southern border illegally this situation creates "incentives for migrants to make the dangerous journey to the southern border in the hope that the overwhelmed and under-resourced immigration system will not be able to expeditiously process them for removal").

²¹ For example, on May 19, 2025, DHS conducted a voluntary charter flight from the United States to Honduras and Colombia, in coordination with those Governments, for aliens who opted to self-deport. *See* DHS, *Project Homecoming Charter Flight Brings Self-Deporters to Honduras, Colombia* (May 19, 2025), <https://www.dhs.gov/news/2025/05/19/project-homecoming-charter-flight-brings-self-deporters-honduras-colombia/> [<https://perma.cc/VXP9-6DSF>]. The participants were welcomed by representatives from their home governments, who also provided benefits and services to those aliens. *See id.*

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (“RFA”), a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553(b) or other law. 5 U.S.C. 603(a), 604(a). Because this IFR relates to agency procedure and involves a foreign affairs function, it is exempt from notice-and-comment rulemaking, and no RFA analysis under 5 U.S.C. 603 or 604 is required for this rule.

C. Unfunded Mandates Reform Act of 1995

This rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1532(a).

D. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Management and Budget has determined that this rule is significant under Executive Order 12866.

Overall, the Department believes that this IFR will provide significant benefits to adjudicators, the parties, the U.S. immigration system overall, and the broader public, which outweigh the potential costs. For example, the IFR’s procedural changes to Board practices are intended to better promote the efficient completion of removal proceedings. Such changes benefit both aliens with meritorious claims, who will obtain relief or protection faster, and DHS, which will be able to remove aliens with meritless claims more quickly. Combined, such changes provide significant benefits to the functioning of the country’s immigration system overall and to the public as a whole. In contrast, there are no apparent definitive costs of the IFR, particularly as it merely removes obstacles to efficient consideration of case appeals that both parties should

want.²² Thus, on balance, the Department believes that the efficiency benefits gained by the changes outweigh the potential costs.

Regarding Executive Order 14192, this IFR is issued with respect to an immigration-related function of the United States and is therefore not a “regulation” or “rule” as that term is defined in section 5 of Executive Order 14192. Even considering Executive Order 14192, the Department determined that this rule will substantially improve Department procedure with the result of negligible new costs to the public. As such, no budget implications will result from this rule, and no balance is needed from the repeal of other regulations.

E. Executive Order 14294 (Overcriminalization of Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not create a criminal regulatory offense and is thus exempt from Executive Order 14924 requirements.

F. Executive Order 13132 (Federalism)

This IFR would not 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This IFR meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This IFR does not propose new or revisions to existing “collection[s] of information” as that term is defined under the Paperwork Reduction Act of

²² As noted in footnote 16 above, there may be hypothetical or speculative situations in which the IFR will have some cost. Nevertheless, for the reasons given throughout this IFR, any such costs—if they even exist beyond the realm of the hypothetical—are far outweighed by the benefits of the IFR.

1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35), and its implementing regulations, 5 CFR part 1320.

I. Congressional Review Act

This IFR is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or 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.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, and by the authority vested in the Director, Executive Office for Immigration Review, by Attorney General Order Number 6260–2025, the Department amends 8 CFR parts 1003, 1208, and 1240 as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Amend § 1003.1 by:

■ a. Redesignating paragraphs (d)(2)(ii) and (iii) as paragraphs (d)(2)(iii) and (iv);

■ b. Adding new paragraph (d)(2)(ii);

■ c. Revising newly redesignated paragraph (d)(2)(iii);

■ d. Revising paragraphs (d)(6)(ii), (e)(8) introductory text, and (e)(8)(i) and (ii);

- e. Removing and reserving paragraph (e)(8)(iii); and
- f. Revising paragraphs (m)(1)(ii)(A) and (m)(2)(iii).

The addition and revisions read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

- (d) * * *
- (2) * * *

(ii) *Consideration by the Board.*

Except for appeals pursuant to paragraphs (b)(5), (6), (7), and (14) of this section, and notwithstanding any other provision of this part, for all appeals of any decision issued on or after March 9, 2026, the Board shall summarily dismiss the appeal unless a majority of the permanent Board members vote en banc to accept the appeal for adjudication on the merits. Such dismissals shall be made by a single Board member without further consideration, unless the single Board member refers an appeal for consideration by the Board en banc. If such a referral is made, the Board shall vote en banc on whether to accept the appeal no later than 10 days after the appeal is filed. If the Board fails to vote en banc within that time, the appeal shall be deemed to have been summarily dismissed under this paragraph (d)(2)(ii). All dismissals under paragraph (d)(2)(i) or (ii) of this section shall be effectuated through the issuance of a written order no later than 15 days after the appeal is filed. When an appeal is summarily dismissed under this paragraph (d)(2)(ii), the Immigration Judge's decision is adopted by the Board and articulates the rationale for removal that is subject to judicial review. Nothing in this paragraph (d)(2)(ii) shall restrict the application of the provisions of paragraph (d)(2)(i) of this section or the authorities in paragraph (h) of this section.

(iii) *Action by the Board.* The Board's case management screening plan shall promptly identify cases that are subject to summary dismissal pursuant to this paragraph (d)(2)(iii). An order dismissing any appeal pursuant to this paragraph (d)(2) shall constitute the final decision of the Board, and "the final order of removal" for purposes of section 242(b)(1) of the Act.

* * * * *

- (6) * * *

(ii) Except as provided in paragraph (d)(6)(iv) of this section, if identity, law enforcement, or security investigations or examinations are necessary in order to adjudicate the appeal or motion, the Board will provide notice to both parties

that the case is being placed on hold until such time as all identity, law enforcement, or security investigations or examinations are completed or updated and the results have been reported to the Board. The Board's notice will notify the alien that DHS will contact the alien with instructions, consistent with § 1003.47(d), to take any additional steps necessary to complete or update the identity, law enforcement, or security investigations or examinations only if DHS is unable to independently update the necessary identity, law enforcement, or security investigations or examinations. The Board's notice will also advise the alien of the consequences for failing to comply with the requirements of this section. DHS is responsible for obtaining biometrics and other biographical information to complete or update the identity, law enforcement, or security investigations or examinations with respect to any alien in detention.

* * * * *

- (e) * * *

(8) *Timeliness.* As provided under the case management system, the Board shall promptly enter orders of summary dismissal, or other miscellaneous dispositions, in appropriate cases consistent with paragraphs (e)(1) and (2) of this section. In all other cases, after completion of the record on appeal, including any briefs, motions, or other submissions on appeal, the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained aliens.

(i) Except for summary dismissals under paragraph (d)(2)(ii) of this section, the Board shall dispose of all cases assigned to a single Board member within 90 days of completion of the record, or within 180 days of completion of the record for all cases assigned to a three-member panel. The record shall be complete upon the earlier of either filing of the last brief or pleading or the passage of the last deadline for filing a brief or pleading.

(ii) In those cases where the panel is unable to issue a decision within the established time limits, the Chairman shall either self-assign the case or assign the case to a Vice Chairman for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete the member's opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion.

- (iii) [Removed and Reserved]

* * * * *

- (m) * * *
- (1) * * *
- (ii) * * *

(A) The alien has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied alien children, as defined in 6 U.S.C. 279(g)(2).

* * * * *

- (2) * * *

(iii) *Limitation on termination.*

Nothing in paragraphs (m)(2)(i) and (ii) of this section authorizes the Board to terminate a case where prohibited by another regulatory provision. Further, nothing in paragraphs (m)(2)(i) and (ii) of this section authorizes the Board to terminate a case for the alien to pursue an asylum application before USCIS, unless the alien has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied alien children, as defined in 6 U.S.C. 279(g)(2).

§ 1003.2 [Amended]

■ 3. Amend § 1003.2(g)(3) by removing the number "21" and adding in its place the number "20" wherever it appears.

■ 4. Amend § 1003.3 by revising paragraph (c)(1) to read as follows:

§ 1003.3 Notice of appeal.

* * * * *

(c) *Briefs*—(1) *Appeal from decision of an immigration judge.* The Board shall set a briefing schedule for all appeals it has not summarily dismissed. For appeals of orders by an Immigration Judge in which no transcript is warranted, briefs shall be due simultaneously from both parties within 20 days of the Board order setting the schedule and in no case more than 35 days after the appeal was filed. For appeals of orders by an Immigration Judge in which a transcript is warranted, briefs shall be due simultaneously from both parties within 20 days of the Board order setting the schedule and making the transcript available. The Board shall not accept a reply brief in any case unless the Board has invited or ordered a party to submit a reply brief. The Board shall not grant an extension of the briefing schedule except, as a matter of discretion, in exceptional circumstances as defined by section 240(e)(1) of the Act. For purposes of this paragraph (c)(1), workload concerns, travel plans, or similar concerns within the control of either party, or their representatives, do not constitute exceptional

circumstances. In its discretion, the Board may consider a brief that has been filed out of time. In its discretion, the Board may request supplemental briefing from the parties after the expiration of the briefing deadline. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

* * * * *

- 5. Amend § 1003.5 by revising paragraph (a) to read as follows:
§ 1003.5 Forwarding of record on appeal.

(a) *Appeal from decision of an immigration judge.* For all appeals not summarily dismissed, the record shall be forwarded to the Board as promptly as possible upon receipt of the appeal.

* * * * *

- 6. Amend § 1003.6 by revising paragraph (c)(4) to read as follows:

§ 1003.6 Stay of execution of decision.

* * * * *

(c) * * *

(4) If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal. However, if the Board grants a motion by the alien for an enlargement of the briefing schedule provided in § 1003.3(c), the Board's order shall also toll the 90-day period of the automatic stay for the same number of days.

* * * * *

§ 1003.18 [Amended]

- 7. Amend § 1003.18 by, as shown in the following table, removing the words in the left column and adding in their place the words in the right column wherever they appear:

the noncitizen	the alien
The noncitizen	The alien
a noncitizen's	an alien's
the noncitizen's	the alien's
unaccompanied chil-	unaccompanied alien
dren, as defined in	children, as defined
8 CFR 1001.1(hh)	in 6 U.S.C.
	279(g)(2)

- 8. Amend § 1003.38 by:
 - a. In paragraph (a), removing the text “3.1(b)” and adding in its place the text “1003.1(b)”;
 - b. Revising paragraph (b); and
 - c. In paragraph (f), removing the text “3.3(c)” and adding in its place the text “1003.3(c)”.

The revision reads as follows:

§ 1003.38 Appeals.

* * * * *

(b) This paragraph (b) addresses filing deadlines for appeals to the Board of Immigration Judge decisions.

(1) Except as provided in paragraph (b)(2) of this section, in all cases the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) shall be filed directly with the Board within 10 calendar days of the Immigration Judge's decision.

(2) In cases where an Immigration Judge has adjudicated an asylum application and did not deny the application under 208(a)(2)(A), (B), or (C) of the Act, the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) shall be filed directly with the Board within 30 calendar days of the Immigration Judge's decision.

(3) In all cases, the Board appeal filing deadline shall be calculated from the date of the stating of an Immigration Judge's oral decision or the mailing or electronic notification of an Immigration Judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR–26) may not be filed by any party who has waived appeal. Any issue not raised in the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) shall be deemed waived.

* * * * *

§ 1003.42 [Amended]

- 9. Amend § 1003.42 by, as shown in the following table, removing the words in the left column and adding in their place the words in the right column wherever they appear:

a noncitizen's	an alien's
Noncitizens	Aliens

§ 1003.55 [Amended]

- 10. Amend § 1003.55 by removing the word “noncitizen” and adding in its place the word “alien” wherever it appears.

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

- 11. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; Pub. L. 115–218.

- 12. Amend § 1208.31 by revising the section heading to read as follows:

§ 1208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

* * * * *

§ 1208.35 [Amended]

- 13. Amend § 1208.35 by, in paragraph (d)(2)(i), removing the word “noncitizen” and adding in its place the word “alien”.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

- 14. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

§ 1240.15 [Amended]

- 15. Amend § 1240.15 by removing the third sentence.

§ 1240.26 [Amended]

- 16. Amend § 1240.26 by, in paragraph (k)(4), removing the word “noncitizen” and adding in its place the word “alien” wherever it appears.

§ 1240.53 [Amended]

- 17. Amend § 1240.53 by removing the third sentence in paragraph (a).

Daren K. Margolin,
Director, Executive Office for Immigration Review, Department of Justice.
[FR Doc. 2026–02326 Filed 2–5–26; 8:45 am]
BILLING CODE 4410–30–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1293

RIN 2590–AB53

Fair Lending, Fair Housing, and Equitable Housing Finance Plans

AGENCY: Federal Housing Finance Agency.
ACTION: Final rule; repeal of 12 CFR part 1293.

SUMMARY: The Federal Housing Finance Agency (“FHFA” or the “Agency”) is issuing this final rule to repeal the Fair Lending, Fair Housing, and Equitable Housing Finance Plans regulation (“part 1293”). After considering public comments received in response to the proposed rule FHFA published on July

28, 2025, this final rule adopts the proposed rule without change.

DATES: The rule is effective March 9, 2026.

FOR FURTHER INFORMATION CONTACT: For technical questions, please contact Leda Bloomfield, Senior Associate Director, Office of Affordable Housing and Community Investment, (202) 649–3415, Leda.Bloomfield@fhfa.gov; for general questions, please contact MediaInquiries@FHFA.gov. This is not a toll-free number. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

FHFA adopted part 1293 in May 2024¹ to codify the Agency's fair housing and fair lending oversight of the regulated entities, the Enterprise Equitable Housing Finance Plan (EHFP or Plan) program,² and requirements for the Enterprise to collect a borrower's language preference and housing counseling and homeownership education information. After setting forth the purpose of part 1293, definitions, and FHFA enforcement authority in subpart A, subpart B requires the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (Banks) (Fannie Mae and Freddie Mac collectively, the "Enterprises"; the Enterprises and the Banks collectively, the "regulated entities") to comply with fair housing and fair lending laws and with federal prohibitions against unfair or deceptive acts or practices; imposes on the board of directors of each regulated entity a duty to direct operations in conformity with such requirements and prohibitions by appropriately considering compliance with such requirements and prohibitions; reserves FHFA's right to require reports from each regulated entity; and imposes a certification obligation on the reporting regulated entity. Subpart C requires each Enterprise to adopt a triennial EHFP; addresses the contents of such Plans (including actions the Enterprise plans to take to address barriers to sustainable housing opportunities faced by one or more underserved

communities), optional Enterprise annual Plan updates, and publication of Plans and updates on an Enterprise's website; addresses FHFA review of Plans once submitted; requires each Enterprise to develop and publish annual performance reports and sets forth the contents of such reports; addresses public engagement on Enterprise Plans and performance assessments; provides for FHFA publication of its annual evaluation assessing Enterprise performance; and imposes obligations related to developing and implementing Plans on Enterprise boards of directors. Subpart D obligates the Banks, beginning in February 2026, to report to FHFA on activities voluntarily undertaken to support underserved communities, and to publicly report if they had taken no such activities and do not plan to take such activities in the future. Subpart E establishes requirements for Enterprise collection of applicant and borrower language preference and whether applicants and borrowers have completed housing counseling or homeownership education and related information. FHFA was not statutorily required to adopt any provision of part 1293.

FHFA published a Notice of Proposed Rulemaking (proposed rule) in July 2025 to repeal part 1293³ after reviewing it in accordance with Executive Order ("Executive Order" or "E.O.") 14219.⁴ That E.O. directed federal agencies to rescind, as appropriate, regulations determined to be inconsistent with law or certain Administration policies on how statutory authority should be administered.⁵ As FHFA stated in its proposed rule, Administration policy as expressed in various EOs includes "the policy to be 'prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens;'"⁶ protect the civil rights of all Americans;⁷ terminate discriminatory and illegal preferences, programs, and activities and combat illegal private-sector diversity, equity, and inclusion preferences, policies, programs, and activities;⁸ terminate to the maximum extent allowed by law, all equity

programs or action plans;⁹ and "focus enforcement resources on regulations that are squarely authorized by constitutional Federal statutes and . . . reduce regulatory burden."¹⁰ Administration priorities also include "lowering the cost of housing and expanding housing supply."¹¹

Congress provided express authorities and duties for FHFA, the Banks, and the Enterprises to fulfill their public purposes in promoting access to credit throughout the nation. These include the statutory requirement to meet housing goals to serve low-income and very low-income families at 12 U.S.C. 4561 to 4564 for the Enterprises and 12 U.S.C. 1430c (implemented at 12 CFR 1281.11) for the Banks (affordable housing goals), a statutory duty imposed on the Enterprises to serve underserved markets at 12 U.S.C. 4565, and statutorily required Enterprise financial support for the Housing Trust Fund and Capital Magnet Fund at 12 U.S.C. 4567 to 4569. Upon review, FHFA believes that the regulated entities' public purpose to support access to credit in underserved markets can be accomplished effectively through administration of these statutory mandates.¹² As a result, FHFA determined that part 1293 is not legally necessary.

FHFA also determined that, as a matter of policy, part 1293 could be inconsistent with Administration policies and, further, repeal would enhance the prudent and financially responsible expenditure of funds from both public and private sources; alleviate unnecessary regulatory burdens; avoid confusion about roles and responsibilities relative to other agencies with primary statutory jurisdiction; avoid redundant statements about FHFA authority; and align with Administration policy. On the bases that part 1293 is unnecessary and could be inconsistent with Administration policies, and that repeal of part 1293 would further Administration policies, FHFA published the proposed rule to repeal part 1293.¹³

⁹ 90 FR at 35476, citing E.O. 14151 (January 20, 2025), section 2(b)(i), at 90 FR 8339 (Jan. 29, 2025).

¹⁰ 90 FR at 35476, citing E.O. 14219 (February 19, 2025), section 1, at 90 FR 10583 (Feb. 25, 2025).

¹¹ 90 FR at 35476, citing Presidential Memorandum of January 20, 2025, at 90 FR 8245 (Jan. 28, 2025).

¹² Members of Congress, the Regulated Entities, and industry groups also agreed with this approach during rulemaking for subpart C.

¹³ In the preamble to the NPRM, FHFA considered each substantive provision of part 1293 to assess its legal necessity or consistency with Administration policies.

³ 90 FR 35475 (July 28, 2025).

⁴ E.O. 14219 *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative* (February 19, 2025), at 90 FR 10583 (Feb. 25, 2025).

⁵ *Id.*, section 2(a).

⁶ 90 FR at 35476, citing E.O. 14192 (January 31, 2025), section 2, at 90 FR 9065 (Feb. 6, 2025).

⁷ 90 FR at 35476, citing E.O. 14173 (January 21, 2025), section 2, at 90 FR 8633 (Jan. 31, 2025).

⁸ *Id.*

¹ See 89 FR 42768 (May 16, 2024) (Final Rule) and 88 FR 25293 (Apr. 26, 2023) (Notice of Proposed Rulemaking).

² The Equitable Housing Finance Plan program was created by FHFA, as conservator, in 2021.

II. Final Rule

After considering the comments received in light of the bases for FHFA's decision to repeal part 1293, FHFA has determined to adopt the proposed rule without change: that is to say, this final rule repeals part 1293 in its entirety. Repeal does not change statutory requirements for the regulated entities to comply with applicable fair lending and fair housing laws, such as the Fair Housing Act,¹⁴ Equal Credit Opportunity Act ("ECOA"),¹⁵ the fair housing provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (Safety and Soundness Act),¹⁶ and the prohibitions on Unfair or Deceptive Acts or Practices ("UDAP") under the Federal Trade Commission ("FTC") Act;¹⁷ and does not change Enterprise or Bank obligations to meet statutory and regulatory affordable housing goals, the Enterprises' statutory duty to serve underserved communities, or the Enterprises' statutory obligations to provide funding to the affordable housing funds. Likewise, repeal does not diminish FHFA's duty, or its commitment, to ensure by appropriate means that the Enterprises and the Banks carry out their statutory missions through activities that are consistent with the Safety and Soundness Act, the authorizing statutes, and the public interest.¹⁸

III. Review of Comments Received

Comments on the proposed rule were accepted between July 28, 2025, and September 26, 2025. FHFA received 26 comments, which were published on FHFA's website. Of these, 25 provided substantive comments about topics in the proposed rule. FHFA received comments from members of the public, trade associations, industry participants, the Council of Federal Home Loan Banks, consumer advocacy organizations, research organizations, and a Congressional representative. Several comment letters were signed by coalitions of organizations. Almost all comments that were opposed to repeal addressed the desirability of part 1293, but did not address the FHFA's reasons for repeal, including that part 1293 is not necessary and that it is inconsistent with the Administration's priorities. Comments to the proposed repeal of part 1293 are discussed below.

A. Support for Proposed Repeal

Several individual commenters and trade associations supported FHFA's proposal to repeal part 1293, stating that repeal would align FHFA's regulations with the Administration's priorities, alleviate unnecessary regulatory and administrative burdens, avoid confusion in roles and responsibilities with other agencies having primary jurisdiction for fair lending and fair housing laws and UDAP provisions of the Federal Trade Act. Commenters also agreed that repeal would avoid duplicative statements of FHFA authorities and improve prudence and financial responsibility in the expenditure of funds.

FHFA appreciates commenters' recognition that the repeal would advance several important policy objectives, including aligning FHFA's rulemaking with the Administration's broader deregulatory priorities, reducing unnecessary administrative and compliance burdens, and clarifying the Agency's role relative to other federal entities with primary jurisdiction over fair lending enforcement. FHFA agrees that these considerations are consistent with sound regulatory practice and prudent stewardship of public resources.

Specifically, commenters noted that part 1293 introduced a framework for fair lending and equitable housing oversight that risked duplicating existing statutory mandates and creating confusion regarding enforcement authority. Commenters noted that the Fair Housing Act and ECOA are primarily enforced by the Department of Housing and Urban Development (HUD) and the Consumer Financial Protection Bureau (CFPB), respectively, where FHFA's supervisory authority is distinct and focused on ensuring that the Enterprises and the Banks operate in a safe and sound manner and comply with the Safety and Soundness Act and the applicable regulated entity charter act. These commenters opined that maintaining a separate regulatory structure under part 1293 that overlaps with the jurisdiction of HUD and CFPB could lead to conflicting expectations, fragmented oversight, and diminished regulatory clarity.

Supporters of the repeal also highlighted that part 1293 imposed administrative complexity without enforceable standards, particularly for the Banks. FHFA acknowledges that the voluntary nature of the Banks' participation in the EHFP program could create ambiguity in both scope and accountability, and ultimately, could limit the utility of part 1293 as a

supervisory tool for these regulated entities.

In addition, commenters urged FHFA to clarify the scope of its fair lending oversight and to continue exercising its broad supervisory authority to request targeted reports and conduct reviews as needed. FHFA affirms its commitment to fair lending compliance and will continue to monitor the regulated entities through supervisory examinations, data analysis, and interagency coordination. The repeal of part 1293 does not diminish FHFA's ability to oversee fair lending practices, but it streamlines the regulatory framework and reinforces the Agency's focus on effective, risk-based oversight consistent with its statutory mandate.

FHFA also agrees with commenters that prudent regulation should not result in duplicative or non-essential requirements. The repeal of part 1293 supports this goal by reducing administrative costs for both the Agency and the regulated entities, allowing resources to be directed toward core mission activities and statutory obligations. FHFA remains committed to promoting access to housing finance nationwide through targeted, enforceable programs and supervisory tools that are aligned with its legal authority and policy priorities.

B. Opposition to Proposed Repeal

Most commenters opposed FHFA's proposal to repeal part 1293 and focused on the potential loss of societal benefits made available through the EHFPs. Commenters criticized part 1293 for not having more rigorous requirements, particularly for the Banks. Some commenters opposed the repeal based on the EHFPs' capability to reduce ongoing homeownership disparities and impact a multitude of underserved communities, unlike the statutorily mandated affordable housing goals and Duty to Serve programs that specify, and thereby limit, the underserved markets eligible for support.

FHFA appreciates the thoughtful input provided by commenters who opposed the proposed repeal of part 1293, particularly those who emphasized the societal benefits attributed to the EHFPs. The Agency remains committed to promoting fair access to credit and the housing finance system, but maintains that repeal of part 1293 aligns with Administration policies to restore regulatory clarity, reinforce statutory alignment, and strengthen the effectiveness of its supervisory framework.

FHFA finds that although the EHFPs may offer a broader reach than the

¹⁴ 42 U.S.C. 3601 *et seq.*

¹⁵ 15 U.S.C. 1691 *et seq.*

¹⁶ 12 U.S.C. 4545.

¹⁷ 15 U.S.C. 45.

¹⁸ 12 U.S.C. 4513(a)(1)(B)(iv) and (v).

affordable housing goals and Duty to Serve programs, these programs are grounded in statute and subject to rigorous performance evaluation and enforcement mechanisms. As such, these programs are designed to address persistent disparities in access to mortgage credit and housing finance, including those affecting rural, manufactured housing, and other underserved markets. The programmatic structure provides a durable and enforceable framework for advancing access to the housing finance system.

FHFA also notes that the regulated entities remain subject to comprehensive obligations under federal fair lending laws, including the Fair Housing Act and ECOA administered by HUD and CFPB, respectively. The Agency's broad supervisory authority complements these rulemaking and enforcement authorities by ensuring that regulated entities operate in a safe and sound manner and comply with applicable legal standards. FHFA acknowledges that fair lending supervisory oversight is often overlapping amongst the other federal regulators and will continue to coordinate closely with HUD, CFPB, and the Department of Justice, as appropriate. Repeal will eliminate duplicative statements of FHFA's authority and avoids duplicating oversight and confusion regarding jurisdiction and the scope of the Agency's authority.

With respect to the Banks, FHFA acknowledges that some commenters viewed part 1293 as a mechanism to impose more rigorous requirements. However, the voluntary nature of the Banks' participation in the EHFP framework created ambiguity regarding enforceability and supervisory expectations. To strengthen oversight of Bank community support activities, the Agency is considering revisions to the existing Community Support Program framework, which allows FHFA to evaluate the Banks' contributions to affordable housing and community development in a manner that is consistent, transparent, and enforceable.

FHFA acknowledges that the repeal of part 1293 does not preclude the regulated entities from pursuing initiatives such as cash flow underwriting, expanding access to affordable rental housing, Special Purpose Credit Programs, or supporting natural disaster rebuilding. The Agency remains committed to supporting innovation and fairness in the housing finance system through tools that are operationally sound and responsive to evolving market needs and conditions.

Although most comments that were opposed to the proposed rule failed to address FHFA's reasons for repeal, a few comments could be interpreted as assertions that part 1293 is necessary. Those comments focused on FHFA's authority, in the absence of part 1293, to take fair lending compliance into account in supervisory ratings and to assess civil money penalties against a regulated entity for a violation of fair lending and consumer protection laws.

Specifically, one commenter asserted that FHFA is abdicating its ability to embed fair lending compliance into its risk-focused rating structure. The Agency's examiners use a risk-focused rating system to assign each regulated entity a composite rating based on an evaluation of various aspects of its operations. The Agency, however, notes that its authority to incorporate fair lending performance into supervisory ratings is derived directly from the Safety and Soundness Act that confer broad supervisory powers on FHFA.¹⁹ FHFA's ability to incorporate fair lending compliance performance into ratings is an inherent supervisory power that continues to exist independently of part 1293. Part 1293 was promulgated as a means of publicly asserting this authority, but it is not the sole source of or a prerequisite for the exercise of that authority. Prior to its adoption of part 1293, FHFA incorporated fair lending compliance performance into the management component of its rating system. FHFA will retain the authority to do so, as appropriate, even after part 1293 is repealed.

Another commenter objected that repealing part 1293 will make it impossible for FHFA to impose a civil money penalty against a regulated entity for a violation of fair lending and consumer protection laws. The commenter pointed out the FHFA Director's statutory obligation to exercise general regulatory authority to ensure that "the purposes of . . . any other applicable act are carried out" but also noted that FHFA's authority to assess a civil money penalty does not extend to violations of "any other applicable act" but is limited to violations of the Safety and Soundness Act, the authorizing statutes (which are charter acts relevant to each regulated entity), and any "order, condition, rule, or regulation under [the Safety and Soundness Act] or any authorizing statute." Working from those observations, the commenter then asserted that FHFA must establish a rule such as part 1293; otherwise, there is no rule "under the Safety and Soundness

Act" on compliance with fair housing, fair lending, and consumer protection acts, the violation of which would support imposition of a civil money penalty.

Even assuming the correctness of the commenter's legal assertions, it does not follow that the inability to impose a civil money penalty unless a certain condition is met (in this case, the presence of a rule such as part 1293) requires FHFA to establish the condition. It is possible that FHFA's narrower grant of authority to impose civil money penalties was intended to be instructive, or at least a consideration, as to the types of violations for which FHFA should assess a monetary penalty. As the commenter also pointed out, FHFA's authority to bring a cease-and-desist proceeding is not similarly limited but could be exercised if FHFA determined there was a violation of "a law" by a regulated entity. FHFA is not without a remedy if it determines that a regulated entity has violated a fair lending or consumer protection law; it may merely be limited in its choice of enforcement action.

FHFA has also carefully considered a comment that repealing part 1293 would unlawfully disregard reliance interests of participants in the housing finance system and that FHFA's analysis of stakeholder investments and expectations was insufficient, considering requirements of the Administrative Procedure Act (APA). The Agency acknowledges that the APA requires agencies to consider reliance interests when changing a rule.²⁰ However, the APA does not require an agency to retain a regulation or provision solely because stakeholders have invested in its implementation.²¹ In accordance with the APA, a reasoned analysis, including a consideration of reliance interests that may have developed under the prior regulation, is required for a change in policy. The proposed rule as adopted as final includes a comprehensive justification

²⁰ See, generally, Kate R. Bowers & Daniel J. Sheffner, *Agency Rescissions of Legislative Rules*, Cong. Rsch. Serv., R46673 (Feb. 8, 2021), available at: <https://www.congress.gov/crs-product/R46673>; Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, Cong. Rsch. Serv., R41546 (Mar. 27, 2017), available at: <https://www.congress.gov/crs-product/R41546>; Perez v. Mortgage Bankers Ass'n, 129 Harv. L. Rev. 102 (2015), available at: <https://harvardlawreview.org/wp-content/uploads/2015/11/291-300-Online.pdf>; and Mortg. Bank., 135 S. Ct. at 1209 (an agency's change in policy may be "arbitrary and capricious" where it "rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account").

²¹ *Ibid.*

¹⁹ See generally, 12 U.S.C. 4501 *et seq.*

that addresses the costs of the rule, the reasons for the proposed change in policy, and the potential reliance interests that are impacted by the rule.

FHFA's analysis determined that while investments were made, repeal of part 1293 would not render these investments entirely moot or without future value. Many of the investments and innovative concepts, particularly in information technology systems, automated underwriting systems, and staff training, provide broader benefits beyond mere compliance with part 1293. Systems and concepts developed in response to part 1293 can continue to be used for a variety of business and regulatory purposes, such as compliance with other housing finance laws, internal risk management, and market analysis. In addition, the knowledge and skills acquired by training staff are transferable and the relationships and partnerships built with community organizations are valuable to ensure the regulated entities operate in the public interest. The repeal of part 1293 does not dissolve these partnerships.

FHFA also considered a commenter's concern about the proposed rule's Cost Analysis—that FHFA did not correctly apply OMB Circular A–4 and did not provide a detailed forward-looking cost-benefit analysis for the years 2025–2027. OMB Circular A–4 requires agencies to compare the proposed action to a baseline that reflects the state of the world without the proposed action. In this case, the proposed action is the repeal of part 1293, under which the regulated entities will be relieved of the obligations of part 1293, thereby eliminating the future costs of compliance and redirecting resources to other activities. The “no-action” baseline, therefore, is the continuation of part 1293 in its current form, under which the regulated entities would continue to comply with the obligations of part 1293, incurring ongoing costs for reporting, compliance, and equitable housing finance planning. As such, FHFA's economic analysis is fully consistent with these instructions.

When evaluating FHFA's cost-benefit analysis, the commenter incorrectly characterized the historical investments from 2022–2024 as costs that should be analyzed in a forward-looking baseline. In economic terms, expenditures that have already occurred and cannot be recovered are considered “sunk costs.” FHFA's analysis correctly identified that the costs incurred by stakeholders to implement part 1293 from 2022–2024 have already been obligated and expended for the purpose of determining the costs associated with repealing part 1293. The relevant

question is not whether those past investments were worthwhile, but whether the future costs of continuing part 1293 outweigh its future benefits.

In sum, FHFA finds that the comments submitted were thorough and comprehensive, addressing key aspects of the proposed rescission. However, none of the commenters demonstrated that part 1293 was legally required or otherwise necessary or established that repeal would be inconsistent with the current Administration's policies as discussed above and in the preamble to the proposed rule. Likewise, commenters also did not demonstrate how retaining part 1293 in its current form would promote the Administration's priorities. This indicates a general consensus or at least an absence of significant disagreement that rescission of part 1293 aligns with the Administration's objectives. Accordingly, FHFA concludes that the repeal of part 1293 is warranted and will not diminish the Agency's commitment to promoting fair lending, affordable housing, and equitable access to credit. The Agency will continue to evaluate and strengthen its regulatory and supervisory tools to ensure that the housing finance system serves all communities in a safe, sound, and sustainable manner.

IV. Reservation of Authority

Notwithstanding any repeal of 12 CFR part 1293, FHFA retains all authority, and continues to exercise general regulatory, examination, and enforcement authorities over its regulated entities to ensure that they are operated and managed in a safe and sound manner, comply with applicable law, and fulfill their public purposes. FHFA exercise of these authorities may be reflected in its supervision and enforcement program and activities, including appropriate rulemaking, examination, and enforcement to address safety and soundness and compliance with applicable law. FHFA exercise of these authorities may also be reflected in coordination and cooperation with other federal agencies generally or on specific matters to ensure that the purposes of the Safety and Soundness Act, the authorizing statutes, and any other applicable law are carried out. The repeal of unnecessary FHFA requirements for the regulated entities to comply with specified laws administered by other agencies is not intended to affect the applicability, effectiveness, or enforcement of those laws with respect to the regulated entities.

V. Regulatory Impacts

A. Executive Orders 12866 and 14215—Regulatory Planning and Review

Executive Order 14215 *Ensuring Accountability for All Agencies* (February 18, 2025)²² (Independent Agency Accountability) amends Executive Order 12866 *Regulatory Planning and Review* (September 30, 1993)²³ to include in its definition of “agency,” those agencies under 44 U.S.C. 3502(1) including any “independent regulatory agency.” Accordingly, pursuant to Executive Order 12866 as amended, FHFA must determine whether its regulatory action to repeal is “significant” and subject to review by OMB. Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

FHFA has determined the final rule not to be a significant regulatory action for purposes of E.O. 12866. OMB has reviewed FHFA's economic impact analysis and has concurred in the determination that the final rule to repeal part 1293 is not a significant regulatory action and does not require OMB coordination and review under E.O. 12866. Further, as a deregulatory action, FHFA does not expect the action to interfere with the actions of another agency, materially alter the budgetary impact of programs, nor raise novel issues relating to legal mandates or the President's priorities.

B. Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 13563 *Improving Regulation and Regulatory Review* (January 18, 2011)²⁴ directs agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance

²² 90 FR 10447 (Feb. 24, 2025).

²³ 58 FR 51735 (Oct. 4, 1993).

²⁴ 76 FR 3821 (Jan. 21, 2011).

with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. FHFA has developed this final rule in a manner consistent with these requirements.

C. Executive Order 14192—Regulatory Costs

Executive Order 14192 *Unleashing Prosperity Through Deregulation* (January 31, 2025)²⁵ requires that for each new regulation issued, at least 10 existing regulations be identified for elimination. Executive Order 14192 also directs that any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. FHFA’s implementation of these requirements will be informed by M–25–20, Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation” (March 26, 2025). This final rule is expected to be an Executive Order 14192 deregulatory action given the associated cost savings.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation’s impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. This final rule will help align FHFA’s regulations with the Administration’s priorities, alleviate unnecessary regulatory burdens, avoid confusion in roles and responsibilities with other agencies having primary jurisdiction, avoid duplicative statements of FHFA authorities, and improve prudence and financial responsibility in the expenditure of funds, from both public and private sources. When promulgated in 2023, the final rule establishing part 1293 was not subject to OMB review. FHFA certifies that this final rule repealing part 1293 will not have a

significant economic impact on a substantial number of small entities because the rule applies to Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

E. Paperwork Reduction Act

The final rule would not contain any information collection requirement that would require the approval of the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted the final rule to OMB for review for purposes of the Paperwork Reduction Act.

F. Congressional Review Act

The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) has determined the final rule does not meet the definition of “major rule” in the Congressional Review Act at 5 U.S.C. 804(2). OIRA also has determined that this rule is not economically significant under subsection 3(f)(1) of Executive Order 12866.

List of Subjects in 12 CFR Part 1293

Fair housing, Federal home loan banks, Government-sponsored enterprises, Mortgages, Reporting and recordkeeping requirements.

PART 1293—[REMOVED AND RESERVED]

■ For the reasons stated in the preamble, under the authority of 12 U.S.C. 4511, 4513, 4513b, and 4526, FHFA removes and reserves 12 CFR part 1293.

Clinton Jones,
General Counsel, Federal Housing Finance Agency.

[FR Doc. 2026–02325 Filed 2–5–26; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–5037; Project Identifier AD–2025–00212–A; Amendment 39–23255; AD 2026–03–06]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation, Inc. (Type Certificate Previously Held by Cessna Aircraft Company) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Textron Aviation, Inc., Model 525B airplanes. This AD was prompted by the manufacturer’s revision of the aircraft maintenance manual (AMM) to introduce more restrictive inspection intervals. This AD requires revising the Airworthiness Limitations Section (ALS) of the existing AMM or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 13, 2026.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2025–5037; 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, 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.

FOR FURTHER INFORMATION CONTACT:

Soban Saeed, Aviation Safety Engineer, FAA, 1801 South Airport Road, Wichita, KS 67209; phone: (316) 946–4123; email: *CCB-COS@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 Textron Aviation, Inc., Model 525B airplanes. The NPRM was published in the **Federal Register** on November 28, 2025 (90 FR 54599). The NPRM was prompted by notification to the FAA by Textron Aviation that the existing Model 525B AMM contained incorrect inspection intervals for airworthiness limitation tasks for Chapter 54—Nacelle/Pylons and Chapter 55—Stabilizers. The incorrect inspection intervals were introduced during a technical manual update. In the NPRM, the FAA proposed to require revising the ALS of the existing AMM or ICA and the existing approved maintenance or inspection program, as applicable. The FAA is issuing this AD to prevent undetected cracks in the engine mount and vertical stabilizer front and rear spar caps. The unsafe condition, if not addressed, could result in reduced structural integrity and

²⁵ 90 FR 9065 (Feb. 6, 2025).

consequent reduced controllability of the airplane.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Capital City Jet Center. The commenter had no objection to the NPRM.

Conclusion

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 conditions on these products. Except for minor

editorial corrections, this AD is adopted as proposed in the NPRM.

Costs of Compliance

The FAA estimates that this AD affects 601 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
Revise the ALS	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$51,085

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:

2026-03-06 Textron Aviation, Inc.:
Amendment 39-23255; Docket No. FAA-2025-5037; Project Identifier AD-2025-00212-A.

(a) Effective Date

This airworthiness directive (AD) is effective March 13, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Textron Aviation, Inc. (Type Certificate previously held by Cessna Aircraft Company) Model 525B airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5530, Vertical Stabilizer Structure; 5415, Nacelle/Pylon, Attach Fittings.

(e) Unsafe Condition

This AD was prompted by the manufacturer's revision of the aircraft maintenance manual (AMM) to introduce more restrictive inspection intervals. The FAA is issuing this AD to prevent undetected cracks in the engine mount and vertical stabilizer front and rear spar caps. The unsafe condition, if not addressed, could result in reduced structural integrity and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Airworthiness Limitations Section (ALS) Revision

Within 150 hours time-in-service (TIS) or 12 months after the effective date of this AD, whichever occurs first: Revise the ALS of the existing AMM or instructions for continued airworthiness (ICA) and the existing approved maintenance or inspection program, as applicable, by incorporating the information identified in table 1 to paragraph (g) of this AD.

TABLE 1 TO PARAGRAPH (g)—REVISED MODEL 525B AIRWORTHINESS LIMITATION TASKS

Task No.	Task title	Existing task interval	Revised task interval	Inspection document	Zone
54-50-00-250	Forward Engine Mount Channel Flange (Eddy Current) Special Detailed Inspection.	6,000 hours TIS	6,100 hours TIS, then 4,100 hours TIS thereafter.	4-12-MI	411, 412
54-50-00-252	Aft Engine Beam Aft Upper Angle Common to Aft Web, BL 24.50 (Eddy Current) Special Detailed Inspection.	11,500 hours TIS	14,100 hours TIS, then every 2,700 hours TIS thereafter.	4-12-MR	311, 312
54-50-00-254	Forward Engine Mount Aft Channel Web (Eddy Current) Special Detailed Inspection.	12,000 hours TIS	16,300 hours TIS, then every 11,600 hours TIS thereafter.	4-12-MS	410, 420

TABLE 1 TO PARAGRAPH (g)—REVISED MODEL 525B AIRWORTHINESS LIMITATION TASKS—Continued

Task No.	Task title	Existing task interval	Revised task interval	Inspection document	Zone
54–50–00–255	Forward Engine Mount Forward Channel Web (Eddy Current) Special Detailed Inspection.	12,000 hours TIS	15,600 hours TIS, then every 11,100 hours TIS thereafter.	4–12–NB	410, 420
55–40–00–250	Vertical Fin Left and Right Front Spar Cap at Attachment Hole #2 (Eddy Current) Special Detailed Inspection.	9,000 hours TIS, then every 7,500 hours TIS thereafter.	9,000 hours TIS, then every 7,000 hours TIS thereafter.	4–12–ML	340
55–40–00–251	Vertical Fin Left and Right Front Spar Cap at Attachment Hole #1 (Eddy Current) Special Detailed Inspection.	15,000 hours TIS	17,700 hours TIS, then every 14,900 hours TIS thereafter.	4–12–MO	340
55–40–00–252	Vertical Fin Left and Right Rear Spar Cap at Attachment Hole #1 (Eddy Current) Special Detailed Inspection.	15,000 hours TIS, then every 14,500 hours TIS thereafter.	23,600 hours TIS, then every 12,100 hours TIS thereafter.	4–12–MQ	340

Note 1 to paragraph (g): Additional guidance for accomplishing the actions required by this AD can be found in Textron Aviation Service Letter SL525B–05–04, Revision 1, dated January 7, 2025.

(h) 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 are allowed unless they are approved as specified in the provisions of paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Central Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Central Certification Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Additional Information

(1) For more information about this AD, contact Soban Saeed, Aviation Safety Engineer, FAA, 1801 South Airport Road, Wichita, KS 67209; phone: (316) 946–4123; email: CCB-COS@faa.gov.

(2) For Textron Aviation material identified in this AD that is not incorporated by reference, contact Textron Aviation, Inc., P.O. Box 7706, Wichita, KS 67277; phone: (316) 517–6215; email: citationpubs@txtav.com; website: ww2.txtav.com/technicalpublications/.

(k) Material Incorporated by Reference

None.

Issued on February 2, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–02415 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2025–5136; Airspace Docket No. 25–AGL–18]

RIN 2120–AA66

Establishment and Amendment of Class E Airspace; South Bend, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes and amends the Class E airspace at South Bend, IN. The name and geographic coordinates of the South Bend International Airport, South Bend, IN, are also being updated to coincide with the FAA's aeronautical database. This action is the result of airspace reviews conducted due to the decommissioning of the Keeler very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. It brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, May 14, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2025–5136 in the **Federal Register** (90 FR 55819; December 4, 2025) proposing to establish and amend the Class E airspace at South Bend, IN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraphs 6002, 6003, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by modifying the Class E surface airspace; establishing a Class E extension to Class C airspace; establishing a Class E extension to a Class E surface area; and modifying the Class E airspace extending upward from 700 ft. above the surface at South Bend, Indiana, due to airspace reviews conducted as part of the decommissioning of the Keeler VOR as part of the VOR MON Program.

For the South Bend International Airport, South Bend, IN, Class E surface area, this action: (1) updates the name of the airport from Michiana Regional Transportation Center Airport to South Bend International Airport and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; (2) removes the city associated with the airport from the airspace legal description header to comply with changes to FAA Order JO 7400.2R, Procedures for Handling Airspace Matters; (3) adds the Chain-O-Lakes Airport to the airspace legal description header as it was previously omitted; and (4) updates the outdated term "Airport/Facility Directory" to "Chart Supplement."

This action establishes a Class E extension to Class C airspace at South Bend International Airport extending upward from the surface within 2 miles each side of the 179° bearing from the airport extending from the 5-mile radius of the airport to 9.7 miles south of the airport.

This action establishes a Class E extension to a Class E surface area at South Bend International Airport extending upward from the surface within 2 miles each side of the 179° bearing from the airport extending from the 5-mile radius of the airport to 9.7 miles south of the airport.

For the South Bend International Airport Class E airspace extending

upward from 700 ft. above the surface, this action: (1) decreases the radius from 8 miles to 7.5 miles; (2) amends the east extension to within 4 miles (decreased from 4.4 miles) south and 8 miles (increased from 7 miles) north of the 089° bearing from the South Bend INTL: RWY 27L-LOC (previously South Bend ILS Localizer East Course) extending from the 7.5-mile radius of the airport (previously South Bend Regional Airport) to 10 miles (decreased from 10.5 miles) east of the airport (previously Misha outer marker); (3) adds an extension within 2 miles each side of the 179° bearing from the airport extending from the 7.5-mile radius to 10.7 miles south of the airport; (4) removes the Gipper VORTAC and associated extensions as they are no longer required; (5) updates the name of the localizer from South Bend ILS Localizer to South Bend INTL: RWY 27L-LOC to coincide with the FAA's aeronautical database; and (6) removes the Misha Outer Marker from the airspace legal description header as it is no longer required.

And for the Jerry Tyler Memorial Airport, Niles, MI, Class E airspace extending upward from 700 ft. above the surface, contained within the South Bend, IN, airspace legal description, this action: (1) increases the radius from 6.4 miles to 6.9 miles; and (2) removes the city associated with the airport in the airspace legal description header to comply with changes to FAA Order JO 7400.2R.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1G, "FAA National

Environmental Policy Act Implementing Procedures," Paragraph B-2.5(a). This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL IN E2 South Bend, IN [Amended]

South Bend International Airport, IN
(Lat. 41°42'30" N, long. 086°19'02" W)
Chain-O-Lakes Airport, IN
(Lat. 41°39'45" N, long. 086°21'15" W)

Within a 5-mile radius of the South Bend International Airport, excluding that airspace within a 1-mile radius of the Chain-O-Lakes Airport and excluding that airspace 1 mile either side of the 214° bearing from the Chain-O-Lakes Airport to the 5-mile radius of the South Bend International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

6003 Class E Airspace Areas Designated as an Extension.

* * * * *

AGL IN E3 South Bend, IN [Establish]

South Bend International Airport, IN
(Lat. 41°42'30" N, long. 086°19'02" W)

That airspace extending upward from the surface within 2 miles each side of the 179° bearing from the airport extending from the 5-mile radius of the airport to 9.7 miles south

of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL IN E4 South Bend, IN [Establish]

South Bend International Airport, IN
(Lat. 41°42'30" N, long. 086°19'02" W)

That airspace extending upward from the surface within 2 miles each side of the 179° bearing from the airport extending from the 5-mile radius of the airport to 9.7 miles south of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AGL IN E5 South Bend, IN [Amended]

South Bend International Airport, IN
(Lat. 41°42'30" N, long. 086°19'02" W)

South Bend INTL: RWY 27L-LOC
(Lat. 41°42'15" N, long. 086°19'59" W)

Jerry Tyler Memorial Airport, IN
(Lat. 41°50'09" N, long. 086°13'31" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of South Bend International Airport; and within 4 miles south and 8 miles north of the South Bend INTL: RWY 27L-LOC extending from 7.5-mile radius of the South Bend International Airport to 10.5 miles east of the South Bend International Airport; and within 2 miles each side of the 179° bearing from the South Bend International Airport extending from the 7.5-mile radius of the South Bend International Airport to 10.7 miles south of the South Bend International Airport; and within a 6.9-mile radius of Jerry Tyler Memorial Airport.

* * * * *

Issued in Fort Worth, Texas, on February 4, 2026.

Courtney E. Johns,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2026-02320 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2025-0668; Airspace
Docket No. 24-ASO-34]

RIN 2120-AA66

Establishment of United States Area Navigation (RNAV) Routes Q-190 and T-497, and Amendment of Domestic Very High Frequency Omnidirectional Range (VOR) Federal Airways V-1, V-70, and V-194; Eastern United States; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule the FAA published in the **Federal Register** on January 2, 2026, establishing United States Area Navigation (RNAV) Routes Q-190 and T-497, and amending domestic Very High Frequency Omnidirectional Range (VOR) Federal Airways V-1, V-70, and V-194, in the eastern United States. This action corrects the route description of RNAV Route Q-190 by adding two route points to clarify that the route is only established within United States airspace.

DATES: The effective date of the final rule published in the **Federal Register** on January 2, 2026 (91 FR 19) remains 0901 UTC, March 19, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air-traffic/publications/. You may also contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT: Brian Vidis, Rules and Regulations Group, Policy Directorate, Federal

Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (91 FR 19; January 2, 2026), establishing RNAV Routes Q-190 and T-497, and amending domestic VOR Federal Airways V-1, V-70, and V-194, in the eastern United States. Subsequent to publication of the final rule the FAA determined that, with respect to RNAV Route Q-190, the route segment between Carleton, MI (CRL), VOR/Distance Measuring Equipment (VOR/DME) and the WIGGZ, PA, waypoint (WP) failed to exclude the portion of the route within Canadian airspace as required.

This action corrects this error by amending the route description of RNAV Route Q-190 to include two new route points where the route intersects the United States/Canadian border. Specifically, the FAA adds the RONZY, MI, WP and the PRANI, OH, WP to the route description of RNAV Route Q-190, thereby excluding Canadian airspace. The addition of these two route points does not substantively alter the route but rather excludes Canadian airspace, as originally intended.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, in Docket No. FAA-2025-0668 as published in the **Federal Register** on January 2, 2026 (91 FR 19), FR Doc. 2025-24218, is corrected as follows:

§ 71.1 [Corrected]

■ On the bottom of page 20, delete the table spanning across all three columns, which is titled “Q-190 Carleton, MI (CRL) to PONCT, NY [New]”, and replace it with the following table.

Q-190 Carleton, MI (CRL) to PONCT, NY [New]

Carleton, MI (CRL)	VOR/DME	(Lat. 42°02'52.90" N, long. 083°27'27.26" W)
RONZY, MI and	WP	(Lat. 42°01'28.49" N, long. 083°08'31.98" W)
PRANI, OH	WP	(Lat. 41°55'16.34" N, long. 081°52'20.28" W)
WIGGZ, PA	WP	(Lat. 41°30'51.00" N, long. 077°58'52.00" W)
RAHKS, NY	WP	(Lat. 42°27'59.28" N, long. 075°14'21.68" W)
PONCT, NY	WP	(Lat. 42°44'48.83" N, long. 073°48'48.07" W)

Issued in Washington, DC, on January 29, 2026.

Alex W. Nelson,

Manager, Rules and Regulations Group.

[FR Doc. 2026-02450 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2025-5367; Airspace
Docket No. 25-AGL-19]

RIN 2120-AA66

Amendment of Class E Airspace; Benton Harbor, MI

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Benton Harbor, MI. The name and geographic coordinates of the Southwest Michigan Regional Airport, Benton Harbor, MI, are also being updated to coincide with the FAA's aeronautical database. This action is the result of an airspace review conducted due to the decommissioning of the Keeler very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. It brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, May 14, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence

Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA-2025-5367 in the **Federal Register** (90 FR 56711; December 8, 2025) proposing to amend the Class E airspace at Benton Harbor, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

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

The Rule

This action amends 14 CFR part 71 by modifying the Class E surface airspace and the Class E airspace extending upward from 700 ft. above the surface at Benton Harbor, Michigan, due to an airspace review conducted as part of the

decommissioning of the Keeler VOR as part of the VOR MON Program.

For the Southwest Michigan Regional Airport, Benton Harbor, MI, Class E surface area, this action: (1) increases the radius from 4.2 miles to 4.5 miles; (2) updates the name of the airport from Ross-Field-Twin Cities Airport to Southwest Michigan Regional Airport and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; (3) removes the city associated with the airport from the airspace legal description header to comply with changes to FAA Order JO 7400.2R, Procedures for Handling Airspace Matters; and (4) updates the outdated term "Airport/Facility Directory" to "Chart Supplement."

For the Southwest Michigan Regional Airport Class E airspace extending upward from 700 ft. above the surface, this action: (1) increases the radius from 6.5 miles to 7 miles; (2) adds an extension within 3.7 miles each side of the 090° bearing from the Southwest Michigan RGNL: RWY 28-LOC extending from the 7-mile radius of the airport to 9.3 miles east of the airport; (3) adds an extension within 2 miles each side of the 090° bearing from the airport extending from the 7-mile radius to 11.5 miles east of the airport; (4) updates the name of the airport from Ross-Field-Twin Cities Airport to Southwest Michigan Regional Airport and updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database; and (5) removes the city associated with the airport from the airspace legal description header to comply with changes to FAA Order JO 7400.2R.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AGL MI E2 Benton Harbor, MI [Amended]

Southwest Michigan Regional Airport, MI (Lat. 42°07′42″ N, long. 086°25′30″ W)

Within a 4.5-mile radius of Southwest Michigan Regional Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AGL MI E5 Benton Harbor, MI [Amended]

Southwest Michigan Regional Airport, MI (Lat. 42°07′42″ N, long. 086°25′30″ W)

Southwest Michigan RGNL: RWY 28–LOC (Lat. 42°07′41″ N, long. 086°26′15″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius

of Southwest Michigan Regional Airport; and within 3.7 miles each side of the 090° from the Southwest Michigan RGNL: RWY 28–LOC extending from the 7-mile radius of the airport to 9.3 miles east of the airport; and within 2 miles each side of the 090° bearing from the airport extending from the 7-mile radius of the airport to 11.5 miles east of the airport.

* * * * *

Issued in Fort Worth, Texas, on February 4, 2026.

Courtney E. Johns,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2026–02321 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2025–5106; Airspace Docket No. 25–ASW–12]

RIN 2120–AA66

Amendment of Class E Airspace; Beeville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Beeville, TX. This action is the result of an airspace review conducted due to the decommissioning of the Three Rivers very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, May 14, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and

subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA–2025–5106 in the **Federal Register** (90 FR 52580; November 21, 2025) proposing to amend the Class E airspace at Beeville, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from the Citizens Rulemaking Alliance.

Overall, the comment and accompanying petition are not applicable to the proposed airspace action; however, the following explanations are provided.

The comment and accompanying petition requested that the final rule be withdrawn, an NPRM or direct final rule be issued, and the effective date delayed for an applicable comment period. The comment was written as if the FAA had already issued a final rule without any opportunity for comment, but in fact, the FAA had only issued an NPRM. The FAA provided a 45-day comment period for the NPRM, during which the commenter submitted its comment and petition. The commenter’s request had already been satisfied at the time it

submitted its comment and petition. The comment, therefore, appears to be unrelated and inapplicable to the instant action.

The petition also seems to allege that, because the FAA employs standardized language in its routine airspace action rulemakings, it has not performed the requisite analyses, specifically with respect to the Regulatory Flexibility Act and Executive Order (E.O.) 12866. Indeed, the FAA has developed standardized language for use in these routine actions to ensure consistency and streamline drafting of rulemaking documents in one of its most prolific regulatory portfolios. However, each action is individually assessed and tailored as appropriate in compliance with applicable law and agency guidance, including the Administrative Procedures Act; the Regulatory Flexibility Act; E.O. 12866; FAA Order JO 7400.2R, *Procedures for Handling Airspace Matters*; and FAA Order 1050.1G, *FAA National Environmental Policy Act Implementing Procedures*. Ironically, the commenter appears to utilize boilerplate language in its comment and petition that is not relevant to the instant action.

Substantively, the petition also makes an assumption that the expansion of the Class E airspace extending upward from 700 ft. above the surface at Beeville, TX, “can foreclose or constrain marginal VFR operations,” which is unsubstantiated. This Class E airspace is established as transitional airspace to/ from terminal or enroute environments around airports with instrument procedures as required by FAA Order JO 7400.2R. No air traffic control services are provided, and there are no communications requirements, so there is little to no impact on VFR traffic. In fact, this Class E airspace advises the VFR pilots that there are instrument procedures and potential IFR traffic in the area which increases the pilot’s situational awareness.

Incorporation by Reference

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

available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by modifying the Class E airspace extending upward from 700 ft. above the surface at Beeville, Texas, due to an airspace review conducted as part of the decommissioning of the Three Rivers VOR as part of the VOR MON Program.

For the Beeville Municipal Airport, Beeville, TX, Class E airspace extending upward from 700 ft. above the surface, this action: (1) increases the radius from 6.6 miles to 7.1 miles from the airport; (2) removes the Beeville NDB and associated extension as they are no longer required; and (3) updates the geographic coordinates of the airport to coincide with the FAA’s aeronautical database.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Beeville, TX [Amended]

Beeville Municipal Airport
(Lat. 28°21′51″ N, long. 097°47′31″ W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Beeville Municipal Airport.

* * * * *

Issued in Fort Worth, Texas, on February 4, 2026.

Courtney E. Johns,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2026–02319 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission.

18 CFR Part 157

[Docket No. RM25–14–000]

Implementation of the Executive Order Entitled “Zero-Based Regulatory Budgeting To Unleash American Energy”; Correction

AGENCY: Federal Energy Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: The Federal Energy Regulatory Commission (FERC) published a direct final rule in the **Federal Register** of October 21, 2025, revising 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.” The document contained an error. This document corrects the regulations.

DATES: This correction is effective February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Karin Herzfeld, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502-8459, karin.herzfeld@ferc.gov.

SUPPLEMENTARY INFORMATION: In FR Doc. 2025-19607 (193 FERC ¶ 61,002) (90 FR 48397, October 21, 2025), FERC added a conditional sunset date to § 157.202 at paragraph (b)(2)(ii)(H) in error. FERC is removing paragraph (b)(2)(ii)(H).

List of Subject in 18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

Accordingly, 18 CFR part 157 is corrected by making the following correcting amendment:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

§ 157.202 [Amended]

■ 2. In § 157.202, remove paragraph (b)(2)(ii)(H).

Issued: February 4, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02431 Filed 2-5-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA-2024-C-3384]

Listing of Color Additives Exempt From Certification; Spirulina Extract

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; order.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the expanded use of spirulina (*Arthrospira platensis*) extract as a color additive in human foods generally (except for infant formula,

certain foods subject to regulation by the U.S. Department of Agriculture, and foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act, unless the use of the added color is authorized by such standards) at levels consistent with good manufacturing practice (GMP), to lower the heavy metal specifications for lead, arsenic, and mercury, and to add a specification for cadmium. We are taking this action in response to a color additive petition (CAP) submitted by GNT USA, LLC (GNT or petitioner).

DATES: This order is effective March 23, 2026. See section IX of this document for further information on the filing of objections. Either electronic or written objections and requests for a hearing on the order must be submitted by March 9, 2026.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. The <https://www.regulations.gov> electronic filing system will accept objections until 11:59 p.m. Eastern Time at the end of March 9, 2026. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-C-3384 for "Listing of Color Additives Exempt from Certification; Spirulina Extract." Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov>.

www.regulations.gov and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Marissa Santos, Office of Pre-Market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-8160 or Meridith L. Kelsch, Office of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 5, 2024 (89 FR 63330), FDA announced that we filed a color additive petition (CAP 4C0334) submitted on behalf of GNT by Exponent, 1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036. The petition proposed that FDA amend the color additive regulations in part 73 (21 CFR 73.530), "Listing of Color Additives Exempt from Certification," to provide for the expanded safe use of spirulina extract as a color additive at levels consistent with GMP in human foods generally, excluding infant formula and certain foods subject to regulation by the U.S. Department of Agriculture (USDA).

II. Background

Spirulina extract is approved under § 73.530 for coloring confections (including candy and chewing gum), frostings, ice cream and frozen desserts (including non-dairy frozen dessert), dessert coatings and toppings, beverage mixes and powders, yogurts (including non-dairy yogurt alternatives), custards, puddings (including non-dairy puddings), cottage cheese, gelatin, breadcrumbs, ready-to-eat cereals (excluding extruded cereals), alcoholic beverages with less than 20 percent alcohol-by-volume content, non-alcoholic beverages, seasoning mixes (unheated), salad dressings, condiments and sauces, dips, coating formulations applied to dietary supplement tablets and capsules, at levels consistent with GMP, and to seasonally color the shells of hard-boiled eggs, except that it may not be used to color foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 341), unless the use of the added color is authorized by such standards. Spirulina extract is exempt from

certification under section 721(c) of the FD&C Act (21 U.S.C. 379e(c)) because we previously determined that certification was not necessary for the protection of public health (78 FR 49117 at 49119, August 13, 2013).

The spirulina extract that is the subject of this final order is a blue-colored powder or liquid prepared by the water extraction and filtration of the dried biomass of *A. platensis* (also known as *Spirulina platensis*), an edible blue-green cyanobacterium. The extraction and filtration remove oil, oil soluble substances, and fibers. The color additive contains phycocyanins as the principal coloring components, and consists of proteins, carbohydrates, and minerals. Based on data and information provided in the petition on the identity, physical and chemical properties, manufacturing process, and composition of the color additive, we have determined that the color additive meets the current specifications for spirulina extract in § 73.530 (Refs. 1 and 2). During the review of the petition, FDA noted that the specifications for heavy metals could be lowered based on the results of the petitioner's batch analyses, and a specification for cadmium should be added. These modifications to the heavy metal specifications would align with FDA's work to reduce dietary exposure to contaminants. Therefore, in addition to expanding the use of spirulina extract, the petitioner proposed to lower the heavy metal specifications for lead (≤ 0.2 mg/kg), arsenic (≤ 0.3 mg/kg), and mercury (≤ 0.1 mg/kg) that are currently in the regulation, and to add a specification for cadmium (≤ 0.3 mg/kg).

There is no generally recognized as safe (GRAS) exception in the definition of a color additive in section 201(t) of the FD&C Act (21 U.S.C. 321(t)), and, therefore, the intended use of a color additive requires our approval. However, we note that spirulina-based ingredients have been the subject of several GRAS notices (GRNs) reviewed by FDA (discussed in 78 FR 49117 at 49118). (Under section 201(s) of the FD&C Act, a substance is GRAS, and excepted from the definition of a food additive, if it is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, to be safe under the conditions of its intended use.) In particular, the spirulina substance that was the subject of GRN 000424 is similar in chemical composition to the subject color additive, with phycocyanin content ranging from 42 to 47 percent (*id.*). If a substance imparts color to a food, it may be subject to regulation as a color

additive even if its use is also considered GRAS.

III. Safety Evaluation

A. Determination of Safety

Under section 721(b) of the FD&C Act (21 U.S.C. 379e(b)), a color additive may not be listed for a proposed use unless the data and other information available to FDA establish that the color additive is safe for that use. Our color additive regulations at 21 CFR 70.3(i) define "safe" to mean that there is convincing evidence establishing with reasonable certainty that no harm will result from the intended use of the color additive.

To determine whether a color additive is safe under the general safety clause, the FD&C Act requires FDA to conduct a fair evaluation of the available data and consider, among other relevant factors: (1) probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food, drugs, devices, or cosmetics because of the use of the additive; (2) cumulative effect, if any, of such additive in the diet of man or animals, taking into account chemically or pharmacologically related substance or substances in such diet; and (3) safety factors recognized by experts as appropriate for the use of animal experimentation data (see section 721(b)(5)(A)(i) through (iii) of the FD&C Act).

As part of our safety evaluation to establish with reasonable certainty that a color additive is not harmful under its intended conditions of use, we consider the additive's manufacturing and stability, the projected human dietary exposure to the additive and any impurities resulting from the petitioned use of the additive, the additive's toxicological data, and other relevant information (such as published literature) available to us. We compare the estimated dietary exposure to the color additive from all sources to an acceptable daily intake (ADI) level established by toxicological data. The dietary exposure is estimated based on the amount of the color additive proposed for use in particular foods or drugs and on data regarding the amount consumed from all sources of the color additive. We commonly use the dietary exposure for the 90th percentile consumer of a color additive as a measure of high chronic dietary exposure.

B. Safety of the Petitioned Use of the Color Additive

During our safety review of this petition (CAP 4C0334), we considered the estimated dietary exposure to

spirulina extract and c-phycoerythrin (the main coloring component) from the petitioned uses of the subject color additive. Specifically, the petitioner sought to expand the intended uses of this color additive to include all foods, except infant formula and certain foods subject to regulation by the USDA (*i.e.*, products subject to regulation by the USDA under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*)). C-phycoerythrin is the predominant phycoerythrin present in spirulina, although low levels of allophycoerythrin are also present; due to the predominance of c-phycoerythrin, the concentration of c-phycoerythrin in spirulina extract is assumed to represent all “phycoerythrins” in spirulina. The petitioner provided the eaters-only 90th percentile dietary exposure to spirulina extract and c-phycoerythrin from the petitioned uses for the U.S. population aged 2 years and older, and various subpopulations.

The petitioner provided information on the proposed expanded food uses of spirulina extract, including food categories in which spirulina extract is intended to be used and the corresponding maximum use levels that represent GMP for the petitioned uses (Ref. 2). The petitioner used food consumption data from the combined 2015–2016 and 2017–2018 National Health and Nutrition Examination Survey (NHANES) to estimate the dietary exposure to spirulina extract from the petitioned uses. The petitioner estimated the eaters-only (*i.e.*, only those individuals in the population that consume the foods of interest) dietary exposure to spirulina extract from the petitioned uses to be 6.3 grams/person/day (g/p/d) at the mean and 14.1 g/p/d at the 90th percentile for the U.S. population aged 2 years and older; and 5.1 g/p/d at the mean and 10.7 g/p/d at the 90th percentile for children aged 2–5 years (Ref. 2). We independently confirmed the petitioner’s dietary exposure using food consumption data from the combined 2015–2016 and 2017–2018 NHANES and concur with the petitioner’s dietary exposure to spirulina extract (Ref. 2).

The petitioner also estimated the eaters-only dietary exposure to c-phycoerythrin from the petitioned uses of spirulina extract to be 0.13 g/p/d at the mean and 0.28 g/p/d at the 90th percentile for the U.S. population aged 2 years and older; and 0.1 g/p/d at the mean and 0.21 g/p/d at the 90th percentile for children aged 2–5 years (Ref. 2).

The petitioner did not provide an updated cumulative dietary exposure estimate for c-phycoerythrin in this petition. However, the petitioner indicated that: (1) the overall maximum GMP use level in the current petition is comparable to that in GRN 000424 on a c-phycoerythrin basis; GRN 000424 pertains to the use of a spirulina-based substance similar in chemical composition to the subject color additive, but with a higher phycoerythrin content; GRN 000424 pertains to the intended use in all foods (except infant formula and foods under the USDA’s jurisdiction) (*i.e.*, products subject to regulation by the USDA under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act) at levels consistent with GMP; (2) the petitioner’s spirulina extract would not be added to foods already containing other sources of spirulina; (3) the number of servings in the daily diet that could be colored with spirulina extract would reasonably be well below the assumption of 50% of the daily servings in the current cumulative dietary exposure of 1.14 g/p/d from the notified GRAS uses of spirulina; and (4) the current cumulative dietary exposure for c-phycoerythrin is inclusive of the dietary exposure to c-phycoerythrin from the approved uses of spirulina extract as a color additive under § 73.530 as well as the expanded uses in the current petition. As such, the petitioner concluded that the intended uses of spirulina extract in this petition would be substitutional to other sources of spirulina in foods (on a c-phycoerythrin basis), and the dietary exposure to c-phycoerythrin from the petitioned uses would be subsumed by the dietary exposure to c-phycoerythrin from the uses in GRN 000424. Therefore, the petitioned uses would not increase the current upper-bound cumulative dietary exposure to c-phycoerythrin of 1.14 g/p/d in GRN 000424. We concur with the petitioner’s statement regarding the cumulative dietary exposure to c-phycoerythrin (Ref. 2).

To support the safety of the petitioned use of spirulina extract, the petitioner referenced the safety determinations made by FDA for spirulina extract in CAPs 2C0293 (78 FR 49117, August 13, 2013), 2C0297 (79 FR 20095, April 11, 2014), 4C0300 (80 FR 50762, August 21, 2015), 6C0306 (82 FR 30731, July 3, 2017), and 0C0316 (87 FR 67785, November 10, 2022). The petitioner also conducted an updated search of the peer-reviewed scientific literature on spirulina and submitted the published studies that they identified as being

relevant to their petition. The petitioner concluded that these publications did not reveal any significant new toxicological effects and should not alter the conclusion of FDA’s previous reviews on spirulina.

FDA’s most recent evaluation of the use of spirulina extract as a color additive in alcoholic beverages with less than 20 percent alcohol-by-volume content, non-alcoholic beverages, condiments and sauces, dips, dairy product alternatives (non-dairy yogurt alternatives, non-dairy frozen desserts, and non-dairy puddings), salad dressings, and unheated seasoning mixes (87 FR 67785, November 10, 2022), included a comprehensive review of studies submitted by the petitioner and a review of all available literature. From our evaluation, we did not have any concerns regarding the safety of the use of spirulina extract and its principal coloring components, phycoerythrins.

Of the publications submitted by the petitioner, some studies had been previously reviewed by FDA (Ref. 3), including a chronic toxicity study which identified a NOAEL (“No Observed Adverse Effect Level”) of 15,000 mg/kg bw/d of spirulina powder. Our review of the new information submitted by the petitioner, the information submitted in previously reviewed publications, as well as our own independent literature search and review of spirulina and phycoerythrins, did not reveal any safety concerns relating to spirulina or phycoerythrins, nor did it identify any information or data that would change the ADI of 1.8 g/p/d for phycoerythrins (Ref. 3).

We discussed the potential allergenicity of spirulina phycoerythrins in our final rule for the use of spirulina extract as a color additive in candy and chewing gum (78 FR 49117 at 49119, August 13, 2013). We stated that, based on our review of a comparison of the known amino acid sequences of c-phycoerythrin, which is the predominant phycoerythrin present in spirulina (Ref. 2), with the sequences of known protein allergens, there is a low probability that the spirulina c-phycoerythrin is a protein allergen. Additionally, while allophycoerythrin is present at very low levels in spirulina, we consider these levels and any allergenicity risk to be negligible. Therefore, we concluded that spirulina phycoerythrins present an insignificant allergy risk to consumers of the color additive. In addition, after a review of all available literature relevant to the potential allergenicity of spirulina, we have determined that while spirulina extract and specifically c-phycoerythrin are possible allergens for certain individuals, reactivity is not

widespread and spirulina sensitization appears to be rare (Ref. 3). Therefore, we continue to conclude that spirulina extract as a color additive presents an insignificant allergy risk for the general population (Ref. 3). We are not aware of any new information that would cause us to change this conclusion.

Our review considered the safety data provided by the petitioner, including our independent review of the current published literature, which did not present evidence of safety concerns for spirulina extract at the expected dietary exposures. Given that the upper-bound cumulative dietary exposure estimate for c-phycocyanin of 1.14 g/p/d is not expected to increase with the new petitioned uses, exposure remains below the previously determined ADI for phycocyanins of 1.8 g/p/d. Therefore, we conclude that spirulina extract is safe for the petitioned uses (Refs. 2 and 3).

IV. Conclusion

Based on the data and information in the petition and other available relevant information, we conclude that the petitioned use of spirulina extract as a color additive at levels consistent with GMP (in human foods generally except for infant formula and products subject to regulation by the USDA under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act) is safe.

We further conclude that this color additive will achieve its intended technical effect and is suitable for the petitioned use. Therefore, we are amending the color additive regulations in 21 CFR part 73 to provide for the safe use of this color additive as set forth in this document. In addition, based on the factors in 21 CFR 71.20(b) and consistent with our conclusions in our earlier published approvals of spirulina extract for petitioned uses, we continue to conclude that batch certification of spirulina extract is not necessary to protect the public health.

V. Public Disclosure

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15, we will delete from the documents any materials that are not available for public disclosure.

VI. Analysis of Environmental Impact

We previously considered the environmental effects of this order, as stated in the August 5, 2024, **Federal**

Register notification of petition for CAP 4C0334 (89 FR 63330 at 63331). The petitioner claimed that this action is categorically excluded under § 25.32(k) (21 CFR 25.32(k)) because the substance is intended to be added directly to food, remain in food through ingestion by consumers, and is not intended to replace macronutrients in food. We have not received any new information or comments regarding this claim of categorical exclusion. We considered the petitioner's claim of categorical exclusion and determined that this action is categorically excluded under § 25.32(k) (Ref. 4). Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Paperwork Reduction Act of 1995

This order contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Section 301(l) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act (21 U.S.C. 379e). This order is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(l) of the FD&C Act (21 U.S.C. 331(l)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(l)(1) to (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(l) of the FD&C Act or any of its exemptions apply to food containing this color additive. Accordingly, this order should not be construed to be a statement that a food containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(l) of the FD&C Act. Furthermore, this language is included in all color additive final orders that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(l) of the FD&C Act applies.

IX. Objections

This order is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the

filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <https://www.regulations.gov>. We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

X. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>.

1. Memorandum from N. Belai, Color Technology Branch, Division of Color Certification and Technology, Office of Cosmetics and Colors, Office of the Chief Scientist, FDA to M. Santos, Regulatory Management Branch (RMB), Division of Food Ingredients (DFI), Office of Pre-Market Additive Safety (OPMAS), Office of Food Chemical Safety, Dietary Supplements, and Innovation (OFCSDSI), Human Foods Program (HFP), FDA, February 3, 2026.
2. Memorandum from H. Lee, Chemistry Evaluation Branch, DFI, OPMAS, OFCSDSI, HFP, FDA to M. Santos, RMB, DFI, OPMAS, OFCSDSI, HFP, FDA, February 3, 2026.
3. Memorandum from R. Arechavala, Toxicology Review Branch, DFI, OPMAS, OFCSDSI, HFP, FDA to M. Santos, RMB, DFI, OPMAS, OFCSDSI, HFP, FDA, February 3, 2026.
4. Memorandum from A. Thompson-Woods, Environmental Review Team, OPMAS, OFCSDSI, HFP, FDA to M. Santos, RMB,

DFI, OPMAS, OFCSDSI, HFP, FDA,
February 3, 2026.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

§ 73.530 [Amended]

■ 2. Section 73.530 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.530 *Spirulina extract.*

* * * * *

(b) *Specifications.* *Spirulina extract* must conform to the following specifications and must be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

(1) Lead, not more than 0.2 milligrams per kilogram (mg/kg) (0.2 parts per million (ppm));

(2) Arsenic, not more than 0.3 mg/kg (0.3 ppm);

(3) Mercury, not more than 0.1 mg/kg (0.1 ppm);

(4) Cadmium, not more than 0.3 mg/kg (0.3 ppm); and

(5) Negative for microcystin toxin.

(c) *Uses and restrictions.* *Spirulina extract* may be safely used for coloring human foods generally at levels consistent with good manufacturing practice, except that it may not be used to color products that are subject to regulation by the U.S. Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*); infant formula; or foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act, unless the use of the added color is authorized by such standards.

* * * * *

Lowel M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-02314 Filed 2-5-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA-2024-C-1085]

Listing of Color Additives Exempt From Certification; Beetroot Red

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; order.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the color additive regulations to provide for the safe use of beetroot red for the coloring of human foods generally, at levels consistent with current good manufacturing practice, except in products under the jurisdiction of the United States Department of Agriculture (USDA), infant formula, or foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), unless the use of the added color is authorized by such standards. We are taking this action in response to a color additive petition (CAP) submitted by Phytolon, Ltd. (Phytolon or petitioner).

DATES: This order is effective March 23, 2026. See section XI for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the order by March 9, 2026.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 9, 2026. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-C-1085 for "Listing of Color Additives Exempt From Certification; Beetroot Red." Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." We will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Christopher Kampmeyer, Office of Pre-Market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1255; or Meadow Platt, Office of Policy and International Engagement, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of March 12, 2024 (89 FR 17789), we announced that we filed a color additive petition (CAP 4C0326) submitted by Phytolon, Ltd., Ha-Tsmikha St, Yokne’am Illit, Israel. The petition proposed to amend the color additive regulations in part 73 (21 CFR part 73), “Listing of Color Additives Exempt From Certification,” to provide for the safe use of beetroot red for the coloring of foods generally, in amounts consistent with current good manufacturing practice, except in products under the jurisdiction of the USDA, in infant formula, and foods for which standards of identity have been promulgated under section 401 of the FD&C Act unless added color is authorized by such standards.

II. Background

Beetroot red is a reddish-purple liquid or powder produced by fermentation using a modified strain of the yeast, *Saccharomyces cerevisiae* (*S. cerevisiae*), expressing the genes for betanin biosynthesis from red beets (*Beta vulgaris* L. var. *rubra*). The principal coloring component in beetroot red is betanin (CAS Reg. No. 7659–95–2). Betanin is a type of betacyanin, which in turn is a type of

betalain. Betalains are a class of water-soluble pigments present primarily in red beets and in plants belonging to the order, Caryophyllales (e.g., quinoa, spinach, amaranths, and others). Betalains are divided into two subclasses: betacyanins (reddish to violet, including betanin) and betaxanthins (yellow to orange). Beetroot red contains a similar betacyanin pigment composition to dehydrated beets (21 CFR 73.40).

The color additive is manufactured by the following steps: (1) construction of the *S. cerevisiae* production strain that is genetically engineered to express the genes involved in the biosynthesis of betanin; (2) expression of betanin product via controlled fermentation by the *S. cerevisiae* production strain; (3) removal of the production organism from the fermentation broth; and (4) water evaporation to produce the liquid form of the product and optional drying to produce a powder form of the product.

The petitioner proposed the following specifications for beetroot red: total betacyanin, not less than 0.6 percent by weight; betanin purity, not less than 75 percent of the total betacyanin; total betacyanin other than betanin, not more than 20 percent; lead, not more than 0.15 milligram per kilogram (mg/kg); arsenic, not more than 0.05 mg/kg; mercury, not more than 0.01 mg/kg; cadmium, not more than 0.05 mg/kg. FDA concluded that the petitioner’s proposed specifications for total betacyanin, betanin purity, and total betacyanin other than betanin are not needed in the codified regulation (Ref. 1).

III. Safety Evaluation

Under section 721(b)(4) of the FD&C Act (21 U.S.C. 379e(b)(4)), a color additive may not be listed for a particular use unless the data and other information available to FDA establish that the color additive is safe for that use. Our color additive regulations at 21 CFR 70.3(i) define “safe” to mean that there is convincing evidence establishing with reasonable certainty that no harm will result from the intended use of the color additive.

As part of our safety evaluation to establish with reasonable certainty that a color additive is not harmful under its intended conditions of use, we consider the additive’s manufacturing and stability, the projected dietary exposure to the additive and any impurities resulting from the petitioned use of the additive, the additive’s toxicological data, and other relevant information (such as published literature) available to us.

IV. Safety of the Petitioned Use of the Color Additive

A. Dietary Exposure Estimate

The petitioner requested that beetroot red be permitted at levels consistent with current good manufacturing practice and provided the representative maximum use levels for the proposed uses of the color additive. The petitioner used food consumption data from the 2017–2018 National Health and Nutrition Examination Survey (NHANES) to estimate the dietary exposure to betanin from the proposed use of beetroot red. The petitioner stated that the use of the color additive would be substitutional for current food uses of beetroot powder (21 CFR 73.40), and therefore, the proposed use of the color additive will not increase the current dietary exposure to betanin in the diet.

The petitioner estimated the eaters-only (that is, only those individuals in the population who consume the foods of interest) dietary exposure to betanin, the principal coloring component, from the intended uses of beetroot red (Ref. 2). However, FDA noted that the petitioner did not provide an estimate of dietary exposure to the powder or liquid forms of beetroot red. Therefore, we conducted our own estimate of dietary exposure to betanin and beetroot red. In addition, the petitioner included food codes for meat and poultry in the dietary exposure estimate and indicated that removal of these food codes would not impact the dietary exposure estimate because beetroot red is proposed for uses in plant-based meat analog products, and due to the limited availability of plant-based meat codes, the petitioner used the comminuted meat and poultry product food codes as surrogates. We noted that NHANES contains food codes for meat substitutes and, therefore, including the surrogate food codes is not necessary.

We estimated the dietary exposure to betanin from the use of beetroot red using 2-day food consumption data from the 2015–2020 NHANES for food and dietary supplements to be 27 mg/person/day (mg/p/d) at the mean and 53 mg/p/d at the 90th percentile for the U.S. population aged 2 years and older and 19 mg/p/d at the mean and 37 mg/p/d at the 90th percentile for children aged 2 to 5 years. Additionally, using the average total betacyanin and percent betanin from betacyanins, we estimated the dietary exposure to beetroot red powder and liquid forms to be 1.8 gram (g)/p/d and 4.4 g/p/d at the mean, respectively and 3.7 g/p/d and 8.9 g/p/d at the 90th percentile, respectively, for the U.S. population aged 2 years and older and 1.3 g/p/d and 3.2 g/p/d at the

mean, respectively and 2.5 g/p/d and 6.1 g/p/d at the 90th percentile, respectively, for children aged 2–5 years (Ref. 2).

B. Toxicological Considerations

To establish that beetroot red is safe for use as a color additive, the petitioner used a weight-of-evidence approach based on the following: (1) the history of widespread and safe consumption of betalains, including the betacyanin, betanin; (2) the results of safety studies conducted with beetroot red as the test article; and (3) an allergenicity assessment of protein sequences introduced into the production strain.

Betanin, as part of beetroot red, is a natural dietary constituent, and FDA acknowledges the long history of safe consumption of betanin from existing dietary sources, including red beetroot and purple dragon fruit (Ref. 3). In 1967, FDA published a regulation authorizing the use of dehydrated beets (beet powder) (21 CFR 73.40), which contains betanin, but we did not specify a maximum daily intake because no significant safety concerns existed. Furthermore, FDA acknowledges that *S. cerevisiae* has a prior history of safe use in a variety of food applications, and we conclude the *S. cerevisiae* strain developed by the petitioner for the production of beetroot red is non-toxicogenic and non-pathogenic (Ref. 3).

We reviewed the mutagenicity and genotoxicity studies (a bacterial reverse mutation assay, an *in vitro* mammalian chromosome aberration assay, an *in vitro* mammalian cell micronucleus assay, an *in vivo* mammalian erythrocyte Pig-a gene mutation assay, and an *in vivo* mutagenicity assessment using duplex sequencing in liver, stomach, and intestine tissues collected from a Pig-a gene mutation assay) using beetroot red as a test article (id.). We agree with the petitioner that beetroot red is not mutagenic or genotoxic under the experimental procedures and conditions applied.

We reviewed the subchronic (90-day) toxicity study in rats using beetroot red as a test article (id.). The no-observed-adverse-effect-levels (NOAELs) established in this study are 3,581 mg beetroot red/kg body weight (bw)/d in male rats and 4,055 mg beetroot red/kg bw/d in female rats, the highest dose tested (id.).

We consider the subchronic toxicity study on betanin-enriched beetroot red in rats to provide an important new set of data that corroborates the existing safety information for beetroot red (see id.). The petitioner states that the beetroot color test article used in the subchronic toxicity study was

specifically manufactured to include pigment at the highest concentration possible (approximately 4.5% of betanin) to maximize the margin of exposure for the safety assessment (see id.).

In its assessment of the allergenicity of beetroot red, the petitioner examined the incidence of beetroot allergy in consumers and conducted bioinformatic analyses to determine if protein sequences introduced into the production strain share significant identity with the protein sequences of known allergens (see id.). The petitioner identified several reports of allergic reactions associated with consumption of beetroot but concluded there is no evidence that betalains are associated with these cases of allergic reactions (see id.). The petitioner did not identify known allergens sharing significant sequence identity with the introduced protein sequences, and we independently verified the results of the allergenicity assessment (see id.). We agree with the petitioner that there is no evidence of allergenic potential of the introduced protein sequences.

Based on the weight of evidence, such as the long history of consumption of beetroot and its color components, including betanin, the safety of orally administered betanin-enriched beetroot red in the subchronic rat study, and the lack of evidence of allergenic potential of introduced protein sequences, we conclude that beetroot red is safe for the petitioned uses (id.).

V. Comments

We received one comment in response to FDA's filing of the beetroot red color additive petition. The commenter requested that we decline to name the color additive "beetroot red" or any similar name using the term "beetroot" because the color additive is not derived from beetroot. The commenter further requested that the color additive be named "betanin." After consideration of the comment, we are listing this color additive as "beetroot red" because (1) the color additive is expressed by genes from red beets (*Beta vulgaris* L. var. *rubra*), and we consider the phrase "beetroot red" appropriately descriptive of the identity of the color additive; and (2) while the color additive contains betanin as its principal coloring component, the color additive is composed of other pigments and non-pigment constituents (as discussed previously in II. Background), and therefore the color additive would not accurately be identified solely as "betanin."

VI. Conclusion

Based on the data and information in the petition and other available relevant information, we conclude that the petitioned use of beetroot red is safe for use as a color additive in foods generally and at levels consistent with current good manufacturing practices, except that it may not be used to color products under the jurisdiction of the USDA, infant formula, and foods for which standards of identity have been promulgated under section 401 of the FD&C Act unless added color is authorized by such standards.

We further conclude that this color additive will achieve its intended technical effect and is suitable for the petitioned use. Therefore, we are amending the color additive regulations in part 73 to provide for the safe use of beetroot red as set forth in this document. In addition, based on the factors in 21 CFR 71.20(b), we conclude that batch certification of beetroot red is not necessary to protect the public health.

VII. Public Disclosure

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 71.15(b), we will delete from the documents any materials that are not available for public disclosure.

VIII. Analysis of Environmental Impact

As stated in the March 12, 2024, **Federal Register** notification of petition for CAP 4C0326, the petitioner claimed that this action is categorically excluded under 21 CFR 25.32(r) because it applies to an action for substances which occur naturally in the environment, and for which the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment. We stated that, if FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. We did not receive any new information or comments regarding this claim of categorical exclusion. We considered the petitioner's claim of categorical exclusion and determined that this action is categorically excluded under 21 CFR 25.32(r) (Ref. 4). Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This order contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Section 301(ll) of the FD&C Act

Our review of this petition was limited to section 721 of the FD&C Act. This order is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) to (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this color additive. Accordingly, this order should not be construed to be a statement that a food containing this color additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act. Furthermore, this language is included in all color additive orders that pertain to food and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

XI. Objections

This order is effective as shown in the **DATES** section, except as to any provisions that may be stayed by the filing of proper objections. If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of

the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <https://www.regulations.gov>. We will publish notice of the objections that we have received or lack thereof in the **Federal Register**.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>.

1. Memorandum from B. Petigara, Division of Color Certification and Technology, Color Technology Branch, Office of Cosmetics and Colors, Office of the Chief Scientist, FDA to C. Kampmeyer, Division of Food Ingredients (DFI), Office of Pre-Market Additive Safety (OPMAS), Office of Food Chemical Safety, Dietary Supplements, and Innovation (OFCSDSI), Human Foods Program (HFP), FDA, February 2, 2026.
2. Memorandum from T. Todorov, Chemistry Evaluation Branch, DFI, OPMAS, OFCSDSI, HFP, FDA to C. Kampmeyer, DFI, OPMAS, OFCSDSI, HFP, FDA, February 2, 2026.
3. Memorandum from A. Khan, Toxicology Evaluation Branch, DFI, OPMAS, OFCSDSI, HFP, FDA to C. Kampmeyer, DFI, OPMAS, OFCSDSI, HFP, FDA, February 2, 2026.
4. Memorandum from D. Wafula, Environmental Review Team, OPMAS, HFP, FDA to C. Kampmeyer, DFI, OPMAS, OFCSDSI, HFP, FDA, February 2, 2026.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 73 is amended as follows:

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

- 1. The authority citation for part 73 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

- 2. Add § 73.39 to subpart A to read as follows:

§ 73.39 Beetroot red.

(a) *Identity*. (1) The color additive beetroot red is a powder or liquid prepared from controlled fermentation of a non-pathogenic and non-toxicogenic strain of the yeast, *Saccharomyces cerevisiae*, genetically engineered to express genes from *Caryophyllales* sp. (e.g., *Beta vulgaris* L. var. *rubra*) involved in the synthesis of betanin. The product is further processed by filtration. Betanin is the principal coloring component of the color additive and imparts a reddish-purple color.

(2) Color additive mixtures made with beetroot red may contain only those diluents that are suitable and are listed in this subpart as safe for use in color additive mixtures for coloring foods.

(b) *Specifications*. Beetroot red must conform to the following specifications and must be free from impurities, other than those named, to the extent that such impurities may be avoided by good manufacturing practice:

(1) Lead, not more than 0.15 milligrams per kilogram (mg/kg) (0.15 part per million (ppm));

(2) Arsenic, not more than 0.05 mg/kg (0.05 ppm);

(3) Mercury, not more than 0.01 mg/kg (0.01 ppm); and

(4) Cadmium, not more than 0.05 mg/kg (0.05 ppm).

(c) *Uses and restrictions*. Beetroot red may be safely used for coloring human foods generally, in amounts consistent with good manufacturing practice, except that it may not be used to color products that are subject to regulation by the United States Department of Agriculture under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*); infant formula, or foods for which standards of identity have been issued under section 401 of the Federal Food, Drug, and Cosmetic Act, unless the use of the added color is authorized by such standards.

(d) *Labeling*. The label of the color additive and of any mixtures prepared therefrom intended solely or in part for coloring purposes must conform to the requirements of § 70.25 of this chapter.

(e) *Exemption from certification*. Certification of this color additive is not necessary for the protection of the public health, and therefore batches of the color additive are exempt from the certification requirements of section

721(c) of the Federal Food, Drug, and Cosmetic Act.

Lowell M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02313 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 516, 520, 522, 529, 556, and 558

[Docket No. FDA–2025–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Application; Change of Sponsor; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), and conditionally approved new animal drug applications (CNADAs) during July, August, and September 2025. The animal drug regulations are also being amended to improve their accuracy and readability.

DATES: This rule is effective February 6, 2026.

FOR FURTHER INFORMATION CONTACT:

Cathie Marshall, Center for Veterinary Medicine, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, cathie.marshall@fda.hhs.gov, 240–402–5693.

SUPPLEMENTARY INFORMATION:

I. Approval of Applications

FDA is amending the animal drug regulations to reflect approval actions for NADAs, ANADAs, and CNADAs during July, August, and September 2025, as listed in table 1. Documentation of environmental review required under the National Environmental Policy Act, summaries of the basis of approval under the Freedom of Information Act (FOIA summaries), and marketing exclusivity and patent information are available at Animal Drugs @FDA: <https://animaldrugsatfda.fda.gov/adafda/views/#/search>.

TABLE 1—ORIGINAL, CONDITIONAL, AND SUPPLEMENTAL APPLICATIONS APPROVED DURING JULY, AUGUST, AND SEPTEMBER 2025

Date of approval	Application No.	Sponsor (drug labeler code ¹)	Product name	Effect of the action	21 CFR sections
July 8, 2025	200–807	Huvepharma EOOD (016592)	MGA (melengestrol acetate Type A medicated article) and EXPERIOR (lubabegron Type A medicated article) and MONOVET (monensin Type A medicated article).	Original approval as a generic copy of NADA 141–590.	558.330
July 8, 2025	200–808	Huvepharma EOOD (016592)	MGA (melengestrol acetate Type A medicated article) and EXPERIOR (lubabegron Type A medicated article) and MONOVET (monensin Type A medicated article) and TYLOVET (tylosin phosphate Type A medicated article).	Original approval as a generic copy of NADA 141–591.	558.625
July 8, 2025	200–815	Felix Pharmaceuticals Pvt. Ltd. (086101).	Cefpodoxime Proxetil Tablets (cefpodoxime proxetil tablets).	Original approval as a generic copy of NADA 141–232.	520.370
July 10, 2025	141–599	Intervet, Inc. (000061)	BRAVECTO QUANTUM (fluralaner for extended-release injectable suspension).	Original approval	522.998
July 11, 2025	200–816	Cronus Pharma Specialities India Private Ltd. (069043).	Meloxisol (meloxicam oral suspension 1.5 mg/mL).	Original approval as a generic copy of NADA 141–213.	520.1367
July 17, 2025	141–607	Intervet, Inc. (000061)	EXZOLT (fluralaner oral solution)	Original approval	520.999 556.290
July 18, 2025	200–759	ZyVet Animal Health, Inc. (086117).	Furosemide Tablets (furosemide tablets)	Original approval as a generic copy of NADA 034–621.	520.1010
July 21, 2025	200–817	Felix Pharmaceuticals Pvt. Ltd. (086101).	Meloxicam Oral Suspension (meloxicam oral suspension 1.5mg/mL).	Original approval as a generic copy of NADA 141–213.	520.1367
August 5, 2025	200–818	Bimeda Animal Health Ltd. (061133).	MOXICLOPRID for dogs (imidacloprid and moxidectin).	Original approval as a generic copy of NADA (141–251).	524–1146
August 14, 2025	200–794	Cronus Pharma Specialities India Private Ltd. (069043).	MELOXISOL (meloxicam oral suspension 0.5mg/mL).	Original approval as a generic copy of NADA 141–213.	520.1367
August 28, 2025	200–821	Parnell Technologies Pty. Ltd. (068504).	Isoflurane (isoflurane liquid)	Original approval as a generic copy of NADA 135–773.	529.1186
August 28, 2025	200–819	Bimeda Animal Health Ltd. (061133).	GAMROZYNE (gamithromycin)	Original approval as a generic copy of NADA 141–328.	522.1014
September 19, 2025 ...	200–824	Felix Pharmaceuticals Pvt. Ltd. (086101).	Dexmedetomidine (dexmedetomidine hydrochloride sterile injectable solution).	Original approval as a generic copy of NADA 141–267.	522.558
September 30, 2025 ...	141–616	Zoetis Inc., (054771)	DECTOMAX–CA1 (doramectin injectable solution).	Conditional approval	516.570

¹ See 21 CFR 510.600(c) for sponsor addresses.

II. Withdrawal of Approval of Applications

Elanco US Inc., 450 Elanco Circle, Indianapolis, IN 46211 (drug labeler

code 058198) requested that FDA withdraw approval of the NADA listed in table 2 because the product information has been combined with

NADA 010–918. No change to the regulatory text is required.

TABLE 2—APPLICATIONS FOR WHICH APPROVAL WAS VOLUNTARILY WITHDRAWN DURING JULY, AUGUST, AND SEPTEMBER 2025

Date of withdrawal of approval	Application No.	Product name	21 CFR section
August 02, 2023 ¹ ...	011-948	HYGROMIX 2.5 (hygromycin B Type A medicated article)	558.274

¹ This withdrawal was not previously published.

III. Changes of Sponsor

The sponsor of the approved applications listed in table 3 has

informed FDA that they have transferred ownership of, and all rights and interest in, these applications to another

sponsor. The regulations cited in table 3 are amended to reflect these actions.

TABLE 3—APPLICATIONS FOR WHICH OWNERSHIP WAS TRANSFERRED TO ANOTHER SPONSOR DURING JULY, AUGUST, AND SEPTEMBER 2025

Application No.	Product name	Transferring sponsor (drug labeler code)	New sponsor (drug labeler code)	21 CFR section
141-136	BIO-COX (salinomycin sodium Type A medicated article) and BMD (bacitracin methylenedisalicylate Type A medicated article).	Zoetis Inc. (054771)	Phibro Animal Health Corp. (066104).	558.550
091-749	TYLAN 10 SULFA-G and TYLAN 40 SULFA-G (tylosin phosphate Type A medicated article and sulfamethazine Type A medicated article).	Do	Do	558.630

IV. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(i)). Although deemed a rule under the FD&C Act, this document does not meet the definition of “rule” in 5 U.S.C. 804(3)(A) because it is a “rule of particular applicability” and is not subject to the congressional review requirements in 5 U.S.C. 801-808. Likewise, this is not a rule subject to Executive Order 12866.

List of Subjects

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, and 529

Animal drugs.

21 CFR Part 556

Animal drugs, Dairy products, Foods, Meat and meat products.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 516, 520, 522, 529, 556, and 558 are amended as follows:

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 1. The authority citation for part 516 continues to read as follows:

Authority: 21 U.S.C. 360ccc-1, 360ccc-2, 371.

■ 2. Add § 516.570 to read as follows:

§ 516.570 Doramectin.

(a) *Specifications.* Each milliliter of solution contains 10 milligrams of doramectin.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in cattle—*(1) *Amount.* 200 micrograms per kilogram (10 milligrams per 110 pounds).

(2) *Indications for use.* For prevention and treatment of infestations caused by larvae of *Cochliomyia hominivorax* (myiasis), and prevention of reinfestation for 21 days in cattle.

(3) *Limitations.* Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. Administer as a single subcutaneous or intramuscular injection. Do not slaughter cattle for human consumption within 35 days of treatment. Not for use in female dairy cattle 20 months of age or older. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.370 [Amended]

■ 4. In § 520.370, in paragraph (b)(1), remove the text “No. 017033” and in its

place add the text “Nos. 017033 and 086101”.

■ 5. Revise the heading of § 520.998 to read as follows:

§ 520.998 Fluralaner chewable tablets.

* * * * *

■ 6. Add § 520.999 to read as follows:

§ 520.999 Fluralaner oral solution.

(a) *Specifications.* Each milliliter (mL) of solution contains 10 milligrams (mg) fluralaner.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in laying hens and replacement chickens—*(1) *Amount.* Administer orally to chickens via the drinking water as 2 single doses, spaced 7 days apart, with each dose consumed over a period of 6 to 24 hours. Each dose is 0.5 mg fluralaner/kilogram (kg) (0.227 mg/pound (mg/lb)) body weight, equivalent to 0.05 mL fluralaner oral solution/kg body weight (0.023 mL/lb).

(2) *Indications for use.* For the treatment and control of northern fowl mites (*Ornithonyssus sylviarum*).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Chickens must not be slaughtered for human consumption for 11 days after the last treatment. No egg discard is required when used according to the labeling.

§ 520.1010 [Amended]

■ 7. In § 520.1010, in paragraph (b)(1), remove the text “No. 000010” and in its place add the text “Nos. 000010 and 086117”.

■ 8. In § 520.1367, revise paragraphs (b)(1) and (2) and the last sentence in paragraph (c)(1) to read as follows:

§ 520.1367 Meloxicam.

* * * * *

(b) * * *

(1) Nos. 000010 and 069043 for use of the products described in paragraph (a) of this section; and

(2) Nos. 013744, 055529, and 086101 for use of the product described in paragraph (a)(2) of this section.

(c) * * *

(1) * * * For all treatments after day 1, administer 0.045 mg/lb (0.1 mg/kg) body weight once daily.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.558 [Amended]

■ 10. In § 522.558, in paragraph (b)(1), remove the text “and 086117” and in its place add the text “086101, and 086117”.

■ 11. Add § 522.998 to read as follows:

§ 522.998 Fluralaner.

(a) *Specifications.* The product is supplied in two vials, one vial containing 2.51 grams of sterile fluralaner and one vial containing the required 15 milliliters (mL) of sterile vehicle for constitution. Each mL of constituted suspension contains 150 milligrams (mg) fluralaner.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use—(1) Amount.* Administer as a single subcutaneous dose every 12 months or every 8 months in the case of potential exposure to *Amblyomma americanum* ticks. The subcutaneous dose volume is 0.1 mL of the constituted suspension/kilogram

(kg) body weight (0.045 mL per pound (mL/lb)). This volume provides a dose of 15 mg fluralaner per kilogram body weight (6.8 mg/lb).

(2) *Indications for use.* Kills adult fleas and for the treatment and prevention of flea infestations (*Ctenocephalides felis*); for the treatment and control of tick infestations *Ixodes scapularis* (black-legged tick), *Dermacentor variabilis* (American dog tick), and *Rhipicephalus sanguineus* (brown dog tick) for 12 months in dogs and puppies 6 months of age and older; and for the treatment and control of *Amblyomma americanum* (lone star tick) infestations for 8 months in dogs and puppies 6 months of age and older.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1014 [Amended]

■ 12. In § 522.1014, in paragraph (b), remove the text “No. 000010” and in its place add the text “Nos. 000010 and 061133”.

■ 13. In § 522.2680 revise paragraphs (d)(1)(ii)(A) and (B) as follows:

§ 522.2680 Zeranol.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) For increased rate of weight gain and improved feed efficiency in growing beef steers and heifers fed in confinement for slaughter.

(B) For increased rate of weight gain in beef calves 2 months of age or older, in growing beef steers and heifers on pasture (stocker, feeder, and slaughter), and in growing beef steers and heifers in a dry lot.

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 14. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1186 [Amended]

■ 15. In § 529.1186, in paragraph (b), remove the text “See Nos. 017033, 054771, and 065085” and in its place add the text “See Nos. 017033, 054771, 065085, and 068504”.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 16. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 17. Add § 556.290 to read as follows:

§ 556.290 Fluralaner.

(a) *Acceptable daily intake (ADI).* The ADI for total residue of fluralaner is 10 µg/kg of body weight per day.

(b) *Tolerances.* The tolerances for parent fluralaner (marker residue) are:

(1) *Chickens.* (i) Liver (target tissue): 320 ppb.

(ii) Muscle: 110 ppb.

(iii) Eggs: 2500 ppb.

(2) [Reserved]

(c) *Related conditions of use.* See § 520.999 of this chapter.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 18. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 19. In § 558.330, revise paragraph (e)(1)(v) to read as follows:

§ 558.330 Lubabegron.

* * * * *

(e) * * *

(1) * * *

Lubabegron (as lubabegron fumarate) in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(v) 1.25 to 4.54	Monensin, 10 to 40 and melengestrol acetate, 0.25 to 2.	Growing beef heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, and for the prevention and control of coccidiosis caused by <i>Eimeria bovis</i> and <i>Eimeria zuernii</i> during the last 14 to 91 days on feed.	Melengestrol acetate Type C top-dress medicated feed (0.5 to 2 lb(s) per head per day) must be top dressed onto or mixed at feeding with a Type C medicated feed containing 1.25 to 4.54 g/ton lubabegron and 10 to 40 g/ton monensin, to provide 0.25 to 0.5 mg melengestrol acetate and 13 to 90 mg lubabegron per head per day, and 0.14 to 0.42 mg monensin per pound of body weight per day, depending upon severity of challenge, up to a maximum of 480 mg monensin per head per day. Feed as the sole ration during the last 14 to 91 days on feed. See special labeling considerations in paragraph (d) of this section, and in §§ 558.342(d) and 558.355(d). Lubabegron fumarate as provided by No. 058198; monensin as provided by No. 058198 or 016592; melengestrol acetate as provided by No. 054771 in § 510.600(c) of this chapter.	058198 016592

* * * * *

§ 558.550 Salinomycin.

(1) * * *

■ 20. In § 558.550, revise paragraphs
(e)(1)(ii) through (iv) to read as follows:

(e) * * *

Salinomycin sodium activity in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(ii) 40 to 60	Bacitracin (as feed grade bacitracin methylenedisalicylate) 4 to 50.	Broiler chickens and replace- ment chickens. Not for use in laying hens: For the pre- vention of coccidiosis caused by <i>Eimeria tenella</i> , <i>E. necatrix</i> , <i>E. acervulina</i> , <i>E. maxima</i> , <i>E. brunetti</i> , and <i>E. mivati</i> , and for in- creased rate of weight gain and improved feed ef- ficiency.	Feed continuously as sole ration. Discontinue use prior to sexual maturity. The dosage of salinomycin sodium should be adjusted to meet the severity of the coccidial challenge, which varies with environmental and man- agement conditions. May be fatal if fed to adult turkeys or horses. Salinomycin as provided by No. 016592; bac- itracin methylenedisalicylate as provided by No. 066104 in § 510.600(c) of this chapter.	016592 066104
(iii) 40 to 60	Bacitracin (as feed grade bacitracin methylenedisalicylate) 50.	Broiler chickens and replace- ment chickens. Not for use in laying hens: For the pre- vention of coccidiosis caused by <i>Eimeria tenella</i> , <i>E. necatrix</i> , <i>E. acervulina</i> , <i>E. maxima</i> , <i>E. brunetti</i> , and <i>E. mivati</i> , and as an aid in the prevention of ne- crotic enteritis caused or complicated by <i>Clostridium</i> spp. or other organisms susceptible to bacitracin methylenedisalicylate.	Feed continuously as sole ration. Discontinue use prior to sexual maturity. The dosage of salinomycin sodium should be adjusted to meet the severity of the coccidial challenge, which varies with environmental and man- agement conditions. May be fatal if fed to adult turkeys or horses. Salinomycin as provided by No. 016592; bac- itracin methylenedisalicylate as provided by No. 066104 in § 510.600(c) of this chapter.	066104
(iv) 40 to 60	Bacitracin (as feed grade bacitracin methylenedisalicylate) 100 to 200.	Broiler chickens and replace- ment chickens. Not for use in laying hens: For the pre- vention of coccidiosis caused by <i>Eimeria tenella</i> , <i>E. necatrix</i> , <i>E. acervulina</i> , <i>E. maxima</i> , <i>E. brunetti</i> , and <i>E. mivati</i> , and as an aid in the control of necrotic enteritis caused or com- plicated by <i>Clostridium</i> spp. or other organisms susceptible to bacitracin methylenedisalicylate.	Feed continuously as the sole ration. Discontinue use prior to sexual maturity. The dosage of salinomycin so- dium should be adjusted to meet the severity of the coccidial challenge, which varies with environmental and management conditions. To control a necrotic en- teritis outbreak, start medication at the first clinical signs of disease. The bacitracin methylenedisalicylate dosage range permitted provides for different levels based on severity of the infection. Consult a poultry diagnostic laboratory or pathologist to determine the diagnosis and advice regarding the optimal level of bacitracin methylenedisalicylate. Administer continuously for 5–7 days or as long as clinical signs persist, and then re- duce bacitracin methylenedisalicylate dosage to preven- tion level (50 g/ton). May be fatal if fed to adult turkeys or to horses. Salinomycin as provided by No. 016592; bacitracin methylenedisalicylate as provided by No. 066104 in § 510.600(c) of this chapter.	066104

* * * * *

- 21. In § 558.625, revise paragraph (e)(2)(ix) to read as follows:

§ 558.625 Tylosin.

(e) * * *
(2) * * *

Tylosin in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsors
(ix) 8 to 10	Monensin, 10 to 40 plus lubabegron (as lubabegron fumarate), 1.25 to 4.54, plus melengestrol acetate, 0.25 to 2.0.	Growing beef heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, suppression of estrus (heat), for reduction of ammonia gas emissions per pound of live weight and hot carcass weight, for the prevention and control of coccidiosis caused by <i>Eimeria bovis</i> and <i>Eimeria zuernii</i> , and for reduction of incidence of liver abscesses associated with <i>Fusobacterium necrophorum</i> and <i>Arcanobacterium pyogenes</i> during the last 14 to 91 days on feed.	Feed as the sole ration during the last 14 to 91 days on feed. Melengestrol acetate Type C top-dress medicated feed (0.5 to 2.0 lb per head per day) must be top dressed onto or mixed at feeding with a Type C medicated feed containing 8 to 10 g/ton tylosin, 1.25 to 4.54 g/ton lubabegron, and 10 to 40 g/ton monensin, to provide 0.25 to 0.5 mg melengestrol acetate, 60 to 90 mg tylosin per head per day, 13 to 90 mg lubabegron per head per day, and 0.14 to 0.42 mg monensin per pound of body weight per day, depending on severity of challenge, up to 480 mg monensin per head per day. See special labeling considerations in §§ 558.330(d), 558.342(d), and 558.355(d). Tylosin and monensin as provided by No. 058198 or 016592; lubabegron fumarate as provided by No. 058198; melengestrol acetate as provided in No. 054771 in § 510.600(c) of this chapter.	058198 016592

§ 558.630 [Amended]

- 22. In § 558.630:
■ a. In paragraph (b)(2), remove the text “054771” and in its place add the text “066104”; and
■ b. In the table in paragraph (e)(2), in the “Sponsor” column, remove the text “054771” and in its place add the text “066104”.

Lowell M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02331 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 220**

[Docket ID: DoD–2022–HA–0054]

RIN 0720–AB87

Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries

AGENCY: Defense Health Agency (DHA), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: As required by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (NDAA–23), this rule reduces financial harm to civilians who are not covered beneficiaries of the Military Health System (MHS), and who receive healthcare services at DoD military medical treatment facilities (MTF). The rulemaking implements the MHS

Modified Payment and Waiver Program (MPWP) through which the DoD applies a sliding fee scale and/or a catastrophic fee waiver to medical invoices of certain non-beneficiaries and accepts payments from health insurers of non-beneficiaries as full payment except for copays, coinsurance, deductibles, nominal fees and non-covered services. **DATES:** This rulemaking is effective on March 9, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Merlyn Jenkins, phone number: (703) 681–8812, mailing address: Office of the Secretary of Defense for Health Affairs, Health Resources Management and Policy, 1200 Defense Pentagon, Washington, DC 20301–1200; email address: merlyn.jenkins.civ@health.mil.

SUPPLEMENTARY INFORMATION: The NDAA–23 also grants the Director of DHA discretionary authority to waive assessment of medical fees of non-beneficiaries when the healthcare provided enhances the knowledge, skills, and abilities (KSAs) of healthcare providers, as determined by the Director of DHA. The DHA is implementing the amendments to 10 U.S.C. 1079b enacted through the NDAA–23. By statute (Pub. L. 117–263, div. A, title VII, § 716(c), Dec. 23, 2022, 136 Stat. 2661), the sliding fee scale and/or catastrophic fee waivers apply to bills for healthcare services provided at MTFs on or after June 21, 2023.

I. Background and Authority

Title 10, United States Code (U.S.C.), section 1073d requires the DoD to maintain MTFs for the purposes of supporting the medical readiness of the armed forces and the readiness of

deployable medical personnel. To maintain medical currency and bolster the KSAs of DoD healthcare providers, the DoD renders emergency, trauma, and other medical services to beneficiaries of the MHS which consist of service members and former service members, and their dependents. The MHS may provide healthcare services to other individuals who are not eligible beneficiaries, in certain circumstances, as authorized by law, and typically on a reimbursable basis (Pub. L. 114–328, 717(c), Dec. 23, 2016, as amended (10 U.S.C. 1071 note); and § 1074(c)).

Regulations implementing DoD's authority under 10 U.S.C. 1095 and related provisions of law to compute reasonable charges for inpatient and ambulatory (outpatient) care provided by MTFs, including charges for pharmaceuticals, durable medical equipment, supplies, immunizations, injections, or other medications, are at 32 CFR part 220, last updated on August 20, 2020 (55 FR 21742–21750). Medical billing is structured under three existing healthcare cost recovery programs: Third Party Collections (10 U.S.C. 1095); Medical Services Account (10 U.S.C. 1079b, 1085, and 1104); and Medical Affirmative Claims (42 U.S.C. 2651–2653). The rates used for billing are modeled after the rates published by the Centers for Medicare & Medicaid Services. The rates are approved annually by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) and published on the DoD Comptroller's website at <https://comptroller.defense.gov/Financial-Management/Reports/rates2023/>. Funds collected

through the healthcare cost recovery programs are used to enhance healthcare delivery at MTFs.

In carrying out the DoD's healthcare cost recovery programs, charges and fees for care provided are assessed, as applicable, to civilian non-beneficiary patients who receive treatment at MTFs. When medical care is provided, such individuals become indebted to the United States. The DoD has authority under the Debt Collection Improvement Act of 1996 (DCIA) (Pub. L. 104–134) to compromise, or terminate the collection of, claims involving monetary indebtedness to the United States. The Federal Claims Collection Standards (FCCS) promulgated at 31 CFR parts 900 through 904, which implement the DCIA, require that Federal agencies aggressively collect all debts arising out of activities of that agency. Collection activities must be undertaken promptly with follow-up action taken as necessary. Although an individual's financial circumstances may be considered in applying the FCCS, the relevance of such information in determinations concerning debt compromise or termination concerns the likelihood of repayment or successful enforced collection within a reasonable period of time, rather than the impact on or financial harm to an individual that is consequential to being indebted.

Title 10 U.S.C. 1079b, as amended by section 716 of NDAA–23, implements financial protections for certain individual civilian non-beneficiaries.

II. Problem Being Addressed Through This Rulemaking

Due to the high cost of healthcare in the United States and the mandate for Federal agencies to aggressively pursue collection of debts under FCCS, civilian non-beneficiaries who were provided emergency or trauma healthcare services in DoD MTFs have experienced financial harm after receiving substantial medical bills from MTFs. The DoD does not have authority to forgive or waive indebtedness for MTF charges outside of the FCCS and has not had authority to discount charges and fees for medical care, in contrast to for-profit and non-profit hospitals that offer various financial assistance policies. As a result, Congress wholly amended 10 U.S.C. 1079b via section 716 of NDAA–23 providing DoD with significant authority to protect patients from financial harm under the existing billing and collection laws. Section 716 directs DoD to apply a sliding fee and/or a catastrophic fee waiver when assessing fees and charges to non-beneficiaries. For non-beneficiaries with health

insurance, accept payments from health insurers as full payment and to not balance bill non-beneficiaries except for copays, coinsurance, deductibles, nominal fees, and non-covered services. It also provides the Director of DHA conditional, discretionary authority to waive the assessment of fees that otherwise would be charged to non-beneficiaries when the healthcare provided enhances the KSAs of healthcare providers, as determined by the Director of DHA. The NDAA for FY 2017 (NDAA–17) authorizes provision of such care on a reimbursable basis to civilians who are not covered beneficiaries. Public Law 114–328, 717(c), Dec. 23, 2016, as amended, 10 U.S.C. 1071 note.

III. Discussion of Comments and Changes

The proposed rule titled “Medical Billing for Healthcare Services Provided by Department of Defense Military Medical Treatment Facilities to Civilian Non-Beneficiaries” was published in the **Federal Register** on October 1, 2024 (89 FR 79804–79815). Comments were accepted for 60 days until December 2, 2024. A total of 12 comments were received of which eight indicated general support for the rule and four expressed various concerns. Please see a synopsis of the comments received, our responses to those comments, and clarifications being made to the regulations at 32 CFR part 220 as a result of the public comments.

1. General Support for the Rule

Comment: The Department received eight public comments expressing support for the proposed rule and four expressing various concerns.

Response: The Department values public input as an essential component of the rulemaking process. We extend our sincere thanks to everyone who submitted comments on the proposed rule. We are particularly grateful for the support expressed by the eight commenters who affirmed the rule's goals. We believe this rule represents a collaborative effort to strengthen financial protections for patients accessing the exceptional healthcare services offered within the MHS.

2. Simplifying the Application Process and Enhancing Patient Protections

Comment: Four commenters expressed concern that the application process seemed too burdensome, specifically that there are too many forms to fill out and too much paperwork to gather as part of the application process. Some pointed out that it could be particularly difficult for

people who are homeless, do not speak English well, or are dealing with other challenges. Commenters advocated that patients be protected from aggressive debt collection while they are trying to get their application processed. Recommendations included simplifying forms, streamlining income verification (including exploring Internal Revenue Service (IRS) collaboration and accepting alternative documentation), limiting supporting documents, providing clearer instructions and dedicated support staff, and translating materials into multiple languages.

Response: We acknowledge the need for a simplified and accessible MHS MPWP process:

- *Clearer Communication:* Section 220.12(e) of the final rule requires standardized language on all invoices, explaining the MHS MPWP in plain terms and directing patients to a dedicated website with detailed program information, frequently asked questions, and a fee calculator to help them estimate their potential savings.

- *Easier Income Verification:* Section 220.12(k)(2)(iii) of the final rule clarifies that patients can use documents other than tax returns and pay stubs to prove their income, such as bank statements or Social Security benefit letters. While we appreciate the suggestion of accessing income data directly from the IRS, this may result in evaluating a patient's income based on outdated information. We will continue to assess the feasibility of this option in the future.

- *Protection During Application:* Section 220.12(m) of the final rule states that DoD will suspend DoD collection actions against the patient (excluding processing of insurance claims) during the application review period.

- *Fresh Start After Approval:* Section 220.12(j)(1) clarifies that we are also resetting the delinquency clock after a decision is made on the application. This means that approved applicants will have a new opportunity to manage their payments without the pressure of past delinquency.

- *Recalling Debt from Treasury:* To prevent unnecessary hardship, the final rule mandates the recall of debts from the Department of the Treasury's Cross-Servicing Program upon approval of a discount or waiver, stopping further collection actions.

- *Flexible Payment Plans:* We recognize the need for affordable payment options. The final rule guarantees flexible installment plans for up to 72 months, allowing patients to spread out their payments over a manageable timeframe.

- *Tax Implications of Waivers:* We understand the concerns regarding the

potential tax implications of debt waivers. However, tax matters fall outside the jurisdiction of the Department.

3. Prioritizing Waivers, Adjusting the Sliding Scale, and Withholding Delinquent Accounts From Transfers to Treasury

Comment: We heard strong support from four commenters for prioritizing the use of waivers to provide greater financial relief, including the use of preemptive waivers, especially for those with injuries similar to those seen in combat. Commenters also advocated for adjustments to the sliding scale and catastrophic cap fees; and one commenter requested that we not transfer delinquent accounts to Treasury, but rather that we hold onto them for an additional eight-month period past delinquency.

Response: We carefully considered this feedback:

- *Waiver Authority:* While we will maintain the DHA Director's discretion to determine when a waiver is appropriate, the final rule makes it clear at § 220.12(o) that after receiving a discount, patients may further apply for a potential waiver. The final rule clarifies at § 220.12(o)(iv) that waivers will be considered in all cases where there is confirmation by a competent medical authority at the treating MTF that the care provided to the applicant enhanced the clinical readiness of military medical personnel. Additionally, we have clarified that waivers may be partial or full and are applicable to a remaining balance that has already been discounted by a sliding fee in order to minimize any tax implications for the patient. The phrase "used sparingly" has been deleted from the final rule.

- *Preemptive Waivers:* Two commenters advocated for automatic or presumptive waivers for specific types of injuries, such as gunshot wounds or car accidents. We will not implement these because the training value of each case depends heavily on its unique circumstances, the experience level of the medical team, and the specific learning objectives. For example, a common fracture might provide valuable training for a new medic, while a complex, multi-system trauma case could offer a significant learning opportunity for even the most experienced surgeons. Assessing whether a case adds KSAs in the context of battlefield equivalency value will be done on a case-by-case basis by the treating facility's competent medical authority as stated at § 220.12(o).

- *Sliding Scale:* Four commenters recommended that we expand the income thresholds for the sliding scale discount. We carefully reviewed the recommendations and determined that the current structure strikes a reasonable balance between providing meaningful relief and ensuring the program's financial sustainability, allowing us to help as many patients as possible. However, we clarify at § 220.12(l)(2) that applicants whose income is between 401 percent through 600 percent of the Federal Poverty Guidelines (FPGs) are eligible for catastrophic fee waivers. We are committed to closely monitoring the program's impact and will consider adjustments to the sliding scale in the future if data indicates that it is not adequately meeting the needs of our patients.

- *Withholding Delinquent Accounts From Transferring to Treasury:* Four commenters requested that delinquent accounts not be transferred to the Treasury. However, per the Federal Claims Collection Standards, we are mandated to transfer debts that become delinquent more than 180 days. As stated at § 220.12(r), individuals may still submit an application for the MHS MPWP after their account has been transferred to the Cross-Servicing Program ("Cross-Servicing") of the Department of the Treasury, Bureau of the Fiscal Service.

4. Clarifying Insurance Billing and Participating in Denials Management

Comment: Three commenters suggested that we clarify our processes for billing insurance and two commenters suggested automatically adjusting Medicaid civilians' fees to their copays or to zero under the sliding scale and abstaining from charging Medicare patients.

Response: We have carefully considered the comments:

- *Streamlined Insurance Processes and Denials:* We have clarified at § 220.12(h) of the final rule that MTFs will engage in standard denials management practices, including providing supporting documentation and participating in appeal processes, to facilitate the resolution of disputed claims.

- *Medicaid and Medicare Billing:* DHA does not intentionally seek out Medicare or Medicaid patients. However, because some MTFs have arrangements with specific localities to accept trauma patients injured in close proximity to the MTF, sometimes Medicare and Medicaid beneficiaries are brought to the MTF for treatment. The DHA has an election agreement with Medicare as a non-participating

provider. Medicare patients treated in MTFs are stabilized and transferred to a Medicare participating hospital. Medicare will pay the MTF for the costs associated with stabilization and transfer. Medicare patients are never balanced billed for care received in an MTF. Because MTFs, as Federal entities, are not licensed by the states, at present all MTFs, except one in Texas, are not allowed to participate in Medicaid. We did not make any changes to the rule, as Medicaid and Medicare billing are beyond the scope of what is needed to implement 10 U.S.C. 1079b. The sliding scale provides substantial reductions based on an individual's income inclusive of discounting a patient's bill to zero should their household income be below 100 percent of the FPGs.

5. Address Pre-Enactment Debt

Comments: Three commenters advocated for relief of debts incurred prior to June 21, 2023, including those currently subject to Treasury offsets.

Response: We recognize the financial challenges these debts may pose. While we are sympathetic to individuals with outstanding medical debt incurred prior to June 21, 2023, the statutory language included at section 716(c) of the NDAA–23 is clearly prospective. Although we cannot retroactively apply the MHS MPWP, patients can work with the DHA Debt Adjudication Office for debts that have not become delinquent. The DHA has limited authority to compromise debts under \$100,000 if an applicant demonstrates an inability to pay under the FCCS. Once a debt has become delinquent, the FCCS requires that we transfer the debt to the Department of Treasury for collection. For delinquent debt, patients can work with debt management at the Department of Treasury to request that their debt be lowered (compromised). Patients should contact the Treasury's Cross-Servicing Program to discuss available options for financial relief.

IV. Other Applicable Authority

Section 717 of NDAA–17 conditionally authorizes DoD to evaluate and treat civilian non-beneficiaries at MTFs if the evaluation and treatment is necessary to maintain medical readiness skills and competencies of healthcare providers. Section 717(c) mandates that DoD bill such individuals for the costs of such healthcare services provided. By amending 10 U.S.C. 1079b, section 716 of NDAA–23 has provided discretionary authority to waive an individual's responsibility to pay those statutorily mandated charges if the provision of care enhances the KSAs of healthcare

providers, as determined by the DHA. If, under 10 U.S.C. 1079b(b), DoD elects to waive charges it is otherwise statutorily required to collect from an individual, any resulting discharge of indebtedness may need to be reported to the IRS in accordance with the reporting requirements at 26 U.S.C. 6050P. DoD may also be required to issue a Form 1099-C, "Cancellation of Debt" (Office of Management and Budget (OMB) Control Number 1545-1424), available at <https://www.irs.gov/pub/irs-pdf/f1099c.pdf>, to the patient in accordance with the same reporting requirements. This discharge of indebtedness could result in gross income being attributed to the patient under 26 U.S.C. 61. Authority provided by § 1079b(c) to adjust or waive assessment of fees and charges for medical care will be exercised by applying criteria applicable to civilian non-beneficiaries, rather than by exercising discretion to discharge indebtedness with respect to non-beneficiaries. Consequently, to reduce avoidable gross income to a patient under 26 U.S.C. 61, DoD will consider a waiver under 10 U.S.C. 1079b(b) of an individual's responsibility to pay charges only after any sliding scale discounts and catastrophic cap on charges have been applied.

V. Summary of Current Billing and Collection Processes Involving Non-Beneficiaries

For non-beneficiary medical encounters occurring prior to June 21, 2023, an MTF processes a bill to either the patient, the patient's third-party insurance, or to another guarantor. The current legal framework to process non-beneficiary bills is established under 10 U.S.C. 1079b (Procedures for Charging Fees to Civilians). Collection of medical debt resulting from medical bills is subject to the DCIA.

Title 10 U.S.C. 1079b directs the Secretary of Defense to implement procedures by which a non-beneficiary will be billed. The ASD(HA) publishes medical rates packages that are updated annually. The ASD(HA) rates reflect the full cost to the Government of providing care to a non-beneficiary patient; the rates generally reflect the same amounts that DoD reimburses to civilian healthcare providers when care is rendered outside of an MTF to a beneficiary patient, and they are also the same rates that DoD uses to bill third-party health insurers (under 10 U.S.C. 1095) when a beneficiary patient receives care in an MTF.

A bill generated for care at an MTF must be paid in full, whether by the patient, medical insurer, or other guarantor. The full amount is pursued

against the patient and/or the patient's guarantor. If the debt is not paid within 180 days of the due date (or an installment plan due date), the debt is transferred to the Cross-Servicing Program ("Cross-Servicing") of the Department of the Treasury, Bureau of the Fiscal Service, for collection. Agencies may also refer eligible debts that are less than 180 days delinquent to the Cross-Servicing program.

Under the current legal framework there is no authority to reduce the amount of a debt owed by a patient who received care at an MTF. There is an ability to compromise a balance that cannot be paid by the non-beneficiary. However, the FCCS, which governs compromises of debt, requires that a debtor reasonably demonstrate the inability to pay the debt balance, which entails evaluation of a debtor's current financial condition, and obtaining a credit report or other financial information in order to evaluate the debtor's assets, liabilities, income, and expenses.

VI. Changes With This Rulemaking

A. MHS MPWP

Under 10 U.S.C. 1079b, as amended by NDAA-23, the DoD is required to apply a sliding scale and/or catastrophic fee waivers to medical invoices generated by MTFs in certain instances. The statute also gives the Director of DHA discretionary authority to waive charges mandated by section 717 of NDAA-17, when the care provided enhances the medical KSAs of MHS healthcare providers, as determined by the Director of DHA. Consequently, the DoD is implementing § 1079b authorities with the objective of mitigating financial harm to civilian non-beneficiaries. The MHS MPWP will be applied uniformly to all civilian non-beneficiary patients who apply to the program. Applicable discounts will be based only on household income and family size. All patients will be eligible to apply for the MHS MPWP in order to mitigate financial harm. Applicants to the MHS MPWP whose income is less than 100 percent of the FPGs will automatically receive a 100 percent discount of their medical bill. Applicants with income between 101 and 400 percent of the FPGs will be eligible for a sliding scale discount; and applicants whose income is between 400 through 600 percent of the FPGs will be eligible for a catastrophic fee waiver.

The MHS MPWP will involve a cascading, sequential process that begins with collecting health insurance information from all patients. For

patients with health insurance, the patient must agree to allow DoD to file medical claims on the patient's behalf. Patients with health insurance who do not consent to allowing DoD to file insurance claims on their behalf will not be eligible for the MHS MPWP. By allowing DoD to file insurance claims on the patient's behalf, the DoD will be assured that insurance remittances and Explanation of Benefits (EOB) documents are properly sent to the DoD. This will enable the DoD to adjust balances on the patient's account inclusive of the amount paid by the insurance carrier, amounts disallowed, and amounts that are the patient's responsibility as determined by the insurance carrier (*i.e.*, copays, coinsurance, deductibles, nominal fees and non-covered services). DoD MTFs will participate in claims disputes through standard denials management practices. Once the patient's account is properly adjusted in accordance with the EOB, the DoD will bill insured patients only for portions of the bill that are their responsibility. For patients without health insurance, DoD will bill the patient.

Patients who are uninsured, underinsured and/or who have a remaining balance for copay, coinsurance, deductible, nominal fee, or non-covered services may apply to the MHS MPWP for application of the sliding scale discounts and catastrophic fee waivers.

Patients unable to pay the remaining balance after the application of the sliding scale and catastrophic fee waivers may also apply for a waiver of their medical fees under 10 U.S.C. 1079b(b), by submitting a completed DD Form 3201-1, "Request for Medical Debt Waiver, Military Health System Modified Payment and Waiver Program" (https://www.esd.whs.mil/Directives/forms/dd3000_3499/). Waivers may be approved at the discretion of the DHA Director when the care rendered to the patient enhanced the KSAs of the healthcare providers as confirmed by competent medical authority at the treating MTFs on the DD Form 3201-1A. Waivers may be partial or full and applied to already waived fees. KSAs are a set of clinical skill requirements a provider needs in order to provide medical care/treatment in the deployed environment. Waivers may result in financial reporting to the IRS and issuance of an IRS Form 1099-C to the patient. Generally, waivers may be granted if: (a) The patient has completed a DD Form 2569, "Third Party Collection Program/Medical Services Account/Other Health Insurance" (OMB Control Number 0720-0055), available

at https://www.esd.whs.mil/Directives/forms/dd2500_2999/;

(b) the patient has submitted a completed application for the MHS MPWP via the DD Form 3201 and any and all appropriate discounts have been applied; and

(c) DHA competent medical authority confirms in writing on the DD Form 3201–1A that the care provided to the patient enhanced the KSAs of the DoD healthcare provider.

(d) If the above conditions are met, the Director of DHA may exercise discretionary authority to waive the medical invoice.

B. Collection of Health Insurance Information

All patients receiving healthcare services at a DoD MTF are asked to complete a DD Form 2569 to collect health insurance information along with the patients' consent for the DoD to file a claim on their behalf. The form advises patients that their "records may be disclosed outside of DoD to healthcare clearinghouses, commercial insurance providers, and other third parties in order to collect amounts owed to the Department of Defense."

C. Billing Insurance

For non-beneficiaries with health insurance who complete the DD Form 2569, the DHA will bill the non-beneficiary's health insurance and accept remittances. When payment or an EOB is received from the insurance company, the DoD will not bill the patient except for copays, coinsurance, deductibles, nominal fees, and amounts for non-covered services. The DoD will suspend collection against the patient for up to 120 days to allow the patient's insurance to process the claim. The DoD will not bill the patient until a determination on payment and/or an EOB is received from the insurance company, or 120 days has lapsed, whichever comes first. If the DoD receives an insurance remittance after 120 days have elapsed, the DoD will deposit the check, adjust the patient's account in accordance with the EOB, and issue the patient a refund for overpayments, if any have been received. The DoD will ensure that medical invoices sent to the patient reflect information about the MHS MPWP, including instructions for applying to the program. The DHA will support claims appeals through standard MTF denials management processes.

D. Delinquent Accounts

Delinquent accounts will be processed in accordance with the DCIA as implemented by the FCCS.

E. Applications for MHS MPWP Received for Delinquent Accounts Transferred to the Department of the Treasury

Individuals may still submit an application for the MHS MPWP even if their account has been transferred to Cross-Servicing; however, any reductions to the medical invoice from the MHS MPWP may be subject to interest, penalties, and costs. For patients who apply and are eligible for a reduction under the MHS MPWP, the DoD will recall the debt from Cross-Servicing. For patients who apply and are ineligible for a reduction under the MHS MPWP, the debt will remain at Cross-Servicing. Patients may request reconsideration for the MHS MPWP when their financial circumstances appear to have significantly changed.

F. Income Verification and Collection of Income Information

Required MHS MPWP application documentation. Patients who desire to apply for the MHS MPWP must do so by completing a DD Form 3201, "Application for Military Health System Modified Payment and Waiver Program" (OMB Control Number PENDING), available at https://www.esd.whs.mil/Directives/forms/dd3000_3499/, and submitting the requisite documents. All DoD patient invoices will include a description of the documents that patients must submit together with DD Form 3201 in order to demonstrate their eligibility for the MHS MPWP. To demonstrate eligibility for a sliding fee/catastrophic fee waiver, the patient must first complete a DD Form 2569 (even in cases where the patient possesses no health insurance). Patients must also attach a copy of their most recent filed Federal income tax return and the patient's (or guarantor's if the patient is a minor) last two pay stubs. Patients who did not file a Federal income tax return for the preceding year must certify that they did not file an income tax return on the DD Form 3201 (a section is provided directly on the application form). Additionally, when the patient has no verifiable income, the patient must provide a certification to that effect on the DD Form 3201. For this purpose, a section is provided directly on the application form. The last two pay stubs or disability check stubs may be used if no Federal income tax return is provided in conjunction with the

patient's certification of annual income on the DD Form 3201 to determine the patient's income. Finally, when the patient has certified to having no verifiable income and has neither a tax return nor pay stubs, other information may be used to validate the patient's lack of income including, but not limited to, the last two bank statements (savings and checking), or a Social Security benefits letter.

For patients with health insurance, the patient must agree to allow DoD to file medical claims on the patient's behalf.

G. Application for MHS MPWP Discounts and Waivers

Consideration for sliding scale and catastrophic fee waivers requires evaluation of the patient's household income. To receive consideration for the sliding fee discount or catastrophic fee waiver, or to be considered for a full waiver of fees under 10 U.S.C. 1079b(b), the patient must apply to the MHS MPWP after receiving the MTF medical invoice by completing and submitting the DD Form 3201 (OMB Control Number PENDING). Applications can be made by: (1) patients with a remaining balance after insurance has been billed by the DoD and the insurance remittance and/or EOB has been received by the DoD; (2) by patients without insurance who have a balance; and (3) by patients with a remaining balance after recovery from tortfeasors is made. Application instructions will be printed on the DoD invoice. Applicants to the MHS MPWP will be notified of the status of their application via the following methods: (1) For approved applications, the DoD will issue to the patient a modified medical invoice reflecting the balance due after applying the sliding fee and/or catastrophic fee waiver; (2) for disapproved applications, the DoD will issue a letter reflecting the reason why the application was disapproved. The letter will inform the patient of the right to reapply should the patient's financial circumstances change.

H. Sliding Fee Discount

Applicants to the MHS MPWP will first be considered for a sliding fee discount, and then for a catastrophic fee waiver. The threshold for the sliding fee discount will be set to a 100 percent medical bill discount and no nominal fee for applicants whose annual household income is at or below 100 percent of the applicable year's FPGs; and a 100 percent medical bill discount plus a stratified nominal fee for applicants whose annual household income is greater than 100 percent and

up to 400 percent of the applicable year's FPGs. The ASD(HA) may periodically adjust the threshold limits by issuing policy to be published on the DoD Reimbursement Rates website (available at <https://comptroller.defense.gov/Financial-Management/Reports/>).

Stratified nominal fees are generally established in a manner that is equitable with what military retirees enrolled in the TRICARE program would be required to pay in the private sector for comparable services. The ASD(HA) will annually set the stratified nominal fees

for outpatient and inpatient care and may periodically adjust the nominal fee by issuing policy to be published on the DoD Reimbursement Rates website. The initial nominal stratified fees are as follows:

Household income falls within the below Federal poverty guidelines	Inpatient fee	Outpatient fee
0%–100%	\$0	
101%–120%	750	50
121%–140%	1,250	50
141%–160%	2,000	50
161%–180%	3,000	50
181%–200%	4,000	50
201%–220%	5,000	50
221%–240%	6,000	50
241%–260%	7,000	50
261%–280%	8,000	50
281%–300%	9,000	50
301%–320%	10,000	50
321%–340%	11,000	50
341%–360%	12,000	50
361%–380%	13,000	50
381%–400%	14,000	50

Applicants with annual household income of greater than 400 percent of the applicable year's FPGs will not be eligible for a sliding fee discount but may be eligible for a catastrophic fee waiver if their household income does not exceed 600 percent.

I. Catastrophic Fee Waiver

The catastrophic fee waiver applies to applicants whose household income is between 401 percent and 600 percent of the FPGs and is based on a formula for adjusting the medical invoice over a 36-month period. The catastrophic fee waiver consists of limiting the patient's medical bill to a maximum percentage of the patient's monthly household income multiplied by 36 months and waiving the balance of the medical bill that exceeds the calculation. If the calculation yields an amount greater than the original medical bill, then the catastrophic fee waiver will not be applicable. The maximum percentage will be set to 5 percent of the patient's monthly household income multiplied by 36 months. The ASD(HA) will annually set the catastrophic fee thresholds by issuing policy to be published on the DoD Reimbursement Rates website.

J. Collection in Installments

As part of the implementation of the sliding fee and catastrophic fee protections to prevent severe financial harm, patients eligible for the MHS MPWP may have amounts collected in installments for a term not to exceed 72 months. Additionally, patients may

request to pay their balance by lump sum. The minimum amount that may be paid by installment per month is \$25.

K. Alternative Authority for Waiver of Medical Fees Based on KSA Enhancement

In accordance with 10 U.S.C. 1079b(b), the Director of DHA may issue a partial or full waiver of already discounted fees for care provided to civilian non-beneficiaries if determined by the Director of DHA to be appropriate. Accordingly, consideration of a waiver of medical fees will occur on a case-by-case basis and only after application approval for the MHS MPWP has occurred and competent medical authority at the MTF that treated the patient confirms (on the DD Form 3201–1A) that the care provided to the patient enhanced provider KSAs. The DD Form 3201–1A is strictly for internal use and is not subject to the Paperwork Reduction Act (PRA). A waiver under 10 U.S.C. 1079b(b) of \$600 or more will result in reporting to the IRS and issuance of a Form 1099–C to the non-beneficiary for the amount waived. All patient invoices will include a statement that the patient may apply for a waiver based on 10 U.S.C. 1079b(b) and § 220.12(n) and include information on how to submit a waiver request.

L. Applicability of the MHS MPWP to Tortfeasors and Third-Party Payers

No discount or waiver of fees under 10 U.S.C. 1079b shall be interpreted to be applicable to tortfeasors under the

Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651 or to third-party payers under 10 U.S.C. 1095. Patients treated at DoD MTFs are responsible to identify on the DD Form 3201 whether their injury/disease was caused by a third party. To be eligible to obtain any discounts or waivers under the MHS MPWP, the patient must consent and agree to cooperate with the United States to recover the cost of care against any liable tortfeasor or insurance under the FMCRA. Patients who have a remaining balance after recoveries from third-party tortfeasors or their insurers, may apply for relief of any remaining medical debt or may be refunded amounts already paid toward their medical debt if no balance is owed.

VII. Expected Impact of This Rulemaking

DoD anticipates that section 716 of the NDAA–23 will substantially mitigate serious financial harm to non-beneficiaries through application of a sliding fee and/or a catastrophic fee waiver to medical invoices generated by MTFs. DoD anticipates that the Director of DHA's discretionary authority to waive fees for non-beneficiaries will also contribute to reducing severe financial harm. The anticipated costs for the MHS MPWP include only the time required for a patient's application to be completed (see Paperwork Reduction Act section of this preamble) and reviewed. This includes time required for civilian non-beneficiary patients to complete the associated DD Form 3201 declaring their income, DoD to receive

and assess the application, followed by the determination of the eligibility for a sliding scale discount, catastrophic fee waiver, or waiver under 10 U.S.C. 1079b(b) by the Director of DHA, and the response time for the decision. The total estimated time is less than 90 calendar days. In addition, costs may be

incurred for patients who desire to apply for a waiver of their medical debt (via a DD Form 3201–1) after they have been approved for the MHS MPWP. Lastly, costs may be incurred by DHA staff who will be responsible for completing and processing the DD Form 3201–1A, which will be used by

competent medical authority to confirm that care provided to civilian non-beneficiaries enhanced provider KSAs.

(1) Government Burden Related to the DD Form 3201, “Application for Military Health System Modified Payment and Waiver Program”:

TABLE A. Government Burden Related to the DD Form 3201, “Application for Military Health System Modified Payment and Waiver Program”			
Part A: LABOR COST TO THE FEDERAL GOVERNMENT		Part B: OPERATIONAL AND MAINTENANCE COSTS	
1)	Collection Instrument: DD Form 3201	1)	Cost Categories
a)	Number of Total Annual Responses: 2,160	a)	Equipment: \$0
b)	Processing Time for each Response: 10 minutes	b)	Printing: \$0.15/printing adjusted medical bills * 2,160 = \$324
c)	Hourly Wage of Worker(s) Processing Responses: \$17.28	c)	Postage: \$0.66 * 2,160 = \$1,425.60
d)	Cost to Process Each Response: \$2.88	d)	Software Purchases: \$0
e)	Total Cost to Process Responses: \$6,220.80	e)	Licensing Costs: \$0
		f)	Other (Envelope): \$0.24 * 2,160 = \$518.40
2)	Overall Labor Burden to the Federal Government		
a)	Total Number of Annual Responses: 2,160	2)	Total Operational and Maintenance Cost: \$2,268.00
b)	Total Labor Burden: \$6,220.80		
Source: 2023 GS Pay Scale at GS-06, Step 1 (https://federaljobs.net/salarybase/#Base_Rate_Chart) Source: Printing page cost (https://www.ecfr.gov/current/title-32/subtitle-A/chapter-I/subchapter-N/part-286/subpart-E/section-286.12). Postage costs: United States Postal Service, https://store.usps.com/store/results/shipping-supplies/_/N-7d0v8v#content .			
Part C: TOTAL COST TO THE FEDERAL GOVERNMENT			
1)	Total Labor Cost to the Federal Government: \$6,220.80		
2)	Total Operational and Maintenance Costs: \$2,268.00		
3)	Total Cost to the Federal Government: \$8,488.80		

(2) Government Burden Related to the Medical Debt Waiver, Military Health DD Form 3201–1, “Request for a

System Modified Payment and Waiver Program”:

TABLE B. Government Burden Related to the DD Form 3201-1, “Request for a Medical Debt Waiver, Military Health System Modified Payment and Waiver Program”			
Part A: LABOR COST TO THE FEDERAL GOVERNMENT		Part B: OPERATIONAL AND MAINTENANCE COSTS	
1)	Collection Instrument: DD Form 3201-1	1)	Cost Categories
a)	Number of Total Annual Responses: 1080	a)	Equipment: \$0
b)	Processing Time per Response: 4 minutes	b)	Printing: \$0.15/printing adjusted medical bills * 1,080 = \$162
c)	Hourly Wage of Worker(s) Processing Responses: \$17.28	c)	Postage: \$0.66 * 1,080 = \$712.80
d)	Cost to Process Each Response: \$1.15	d)	Software Purchases: \$0
e)	Total Cost to Process Responses: \$1244.16	e)	Licensing Costs: \$0
		f)	Other (Envelope): \$0.24 * 1,080 = \$259.20
2)	Overall Labor Burden to the Federal Government		
a)	Total Number of Annual Responses: 1080	2)	Total Operational and Maintenance Cost: \$1,134.00
b)	Total Labor Burden: \$1244.16		
Source: 2023 GS Pay Scale at GS-06, Step 1 (https://federaljobs.net/salarybase/#Base_Rate_Chart)			
Part C: TOTAL COST TO THE FEDERAL GOVERNMENT			
1)	Total Labor Cost to the Federal Government: \$1,244.16		
2)	Total Operational and Maintenance Costs: \$1,134.00		
3)	Total Cost to the Federal Government: \$2,378.16		

(3) Government Burden Related to the DD Form 3201-1A, “MHS Modified Payment and Waiver Program (MPWP) Medical Skills Sustainment Scoring Worksheet”:

(4) Note: The DD Form 3201-1A is strictly for internal use and is not subject to the PRA.

TABLE C. Government Burden Related to the DD Form 3201-1A, “MHS Modified Payment and Waiver Program (MPWP) Medical Skills Sustainment Scoring Worksheet”			
Part A: LABOR COST TO THE FEDERAL GOVERNMENT		Part B: OPERATIONAL AND MAINTENANCE COSTS	
1)	Collection Instrument: DD Form 3201-1A	1)	Cost Categories
a)	Number of Total Annual Responses: 500	a)	Equipment: \$0
b)	Processing Time for each Response: 20 minutes	b)	Printing: \$0.15 * 500 = \$75
c)	Hourly Wage of Worker(s) Processing Responses: \$78.05	c)	Postage: \$0
d)	Cost to Process Each Response: \$26.02	d)	Software Purchases: \$0
e)	Total Cost to Process Responses: \$13,009.10	e)	Licensing Costs: \$0
		f)	Other: \$0
2)	Overall Labor Burden to the Federal Government		
a)	Total Number of Annual Responses: 500	2)	Total Operational and Maintenance Cost: \$75
b)	Total Labor Burden: \$13,009.10		
Source: 2024 GS Pay Scale at GS-15, Step 5 (https://federaljobs.net/salarybase/#Base_Rate_Chart) Source: Printing page cost (https://www.ecfr.gov/current/title-32/subtitle-A/chapter-I/subchapter-N/part-286/subpart-E/section-286.12).			
Part C: TOTAL COST TO THE FEDERAL GOVERNMENT			
1)	Total Labor Cost to the Federal Government: \$13,009.10		
2)	Total Operational and Maintenance Costs: \$75		
3)	Total Cost to the Federal Government: \$13,084.10		

VIII. Regulatory Compliance Analysis

A. Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Order 12866 and Executive Order 13563 direct agencies to assess all costs, benefits and available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, safety effects, distributive impacts, and equity). These Executive Orders emphasize the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated significant, under section 3(f) of Executive Order 12866.

B. Executive Order 14192, “Unleashing Prosperity Through Deregulation”

Executive Order 14192 establishes a regulatory cap for Fiscal Year 2025 and requires agencies to identify 10 existing regulations to be repealed unless the regulation meets certain exemptions. This final rule is not an Executive Order 14192 regulatory action under OMB M–25–20, “Guidance Implementing Section 3 of Executive Order 14192,” because it does not impose any more than *de minimis* regulatory costs.

C. Congressional Review Act (5 U.S.C. 801 et seq.)

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), OMB’s Office of Information and Regulatory Affairs has determined that this final rule does not meet the criteria set forth in 5 U.S.C. 804(2).

D. Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The ASD(HA) certified that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act aims at taking into account the impact of regulations on small businesses, small organizations, small governmental jurisdictions, and small entities. More specifically, the law states “. . . agencies shall endeavor . . . to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” (Pub. L. 96–354, September

19, 1980; section 2 (b)) The amendments to 32 CFR part 220 do not impact the small entities referenced in this paragraph. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

E. Section 202, Public Law 104–4, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2025, that threshold is approximately \$211 million. This final rule will not mandate any requirements for State, local, or tribal governments, and will not affect private sector costs. An unfunded mandate occurs when a State, local, or tribal government must perform certain actions or offer certain programs but does not receive any Federal funds to make it happen. The Federal Government passes legislation requiring the program, but the law does not include any funding. This final rule will only affect a very narrow category of the public and it will not impact State, local, or tribal governments. Additionally, it will not affect private sector costs as all proposed actions would be completed by Federal agencies.

G. Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

Section 220.12 of this final rule contains information collection requirements. As required by the Paperwork Reduction Act (44 U.S.C. chapter 35), DoD submitted an information clearance package to the OMB for review (Control Number 0720–0083). The implementation of the MHS MPWP requires the collection of information from applicants to determine eligibility for discounts and waivers, as authorized by 10 U.S.C. 1079b. This information collection has been submitted to and is pending review by OMB in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB has received the revised collection of information. OMB’s receipt of the revised collection of information is not an approval to conduct or sponsor an information collection under the Paperwork Reduction Act of 1995. In accordance with 5 CFR 1320, the revised collection of information associated with this rulemaking is not approved by OMB at this time. OMB’s approval of the revised collection of information will occur

within 30 days after the Final rulemaking publishes. If OMB does not approve the new collection of information as requested, DoD will immediately remove the provision containing a new collection of information or take such other action as is directed by OMB. Please note that the DD Form 3201–1A is strictly for internal use and is not subject to the Paperwork Reduction Act.

In response to DoD’s invitation in the proposed rule to comment on any potential paperwork burden associated with this rule, the following comments were received.

Comment: Two commenters expressed concern that the MHS MPWP application process would be overly burdensome for both patients and administrative staff. They criticized the complexity of the required forms and procedures, citing multiple forms and excessive detail as barriers to successful navigation, especially for patients with limited resources or language access. The required documentation, such as tax returns and pay stubs, was considered onerous and potentially prohibitive for vulnerable populations like the homeless, transient, and recently unemployed.

Response: We acknowledge the concerns raised about the potential complexity of the MHS MPWP application process and are committed to making it as simple and accessible as possible. The Department is considering enabling online applications but notes financial and logistical challenges with implementation. The final rule, § 220.12(k)(2)(iii), addresses alternative forms of income verification to ease the burden on patients.

(1) Respondent Burden Related to DD Form 3201, “Application for Military Health System Modified Payment and Waiver Program.” This is a new collection. Using the information collected on the form, DoD medical billing offices will determine whether the patient is eligible for the medical discount/waiver program. If the patient is eligible, the billing office will generate an adjusted medical bill and send it to the patient. If the patient is not eligible, the billing office will send written correspondence to the patient, informing them that they are not eligible for the discount program and of their right to reapply should their financial circumstances change. Processing of the application will be annotated on the last page of the application. The application will be filed in the billing office’s official records.

Part A: ESTIMATION OF RESPONDENT BURDEN		Part B: LABOR COST OF RESPONDENT BURDEN	
1)	Collection Instrument: DD Form 3201	1)	Collection Instrument: DD Form 3201
a)	Number of Respondents: 2,160	a)	Number of Total Annual Responses: 2,160
b)	Number of Responses Per Respondent: 1	b)	Response Time: 4 minutes
c)	Number of Total Annual Responses: 2,160	c)	Respondent Hourly Wage: \$33.58*
d)	Response Time: 4 minutes	d)	Labor Burden per Response: \$2.24
e)	Respondent Burden Hours: 144 hours	e)	Total Labor Burden: \$4,835.52
2)	Total Submission Burden	2)	Overall Labor Burden
a)	Total Number of Respondents: 2,160	a)	Total Number of Annual Reponses: 2,160
b)	Total Number of Annual Responses: 2,160	b)	Total Labor Burden: \$4,835.52
c)	Total Respondent Burden Hours: 144 hours		
Approximately 8,000 civilian non-beneficiary patients are treated at DoD MTFs annually. The U.S. Census Bureau estimates that 27 percent of Americans are uninsured. Based on that estimate, we anticipate that 2,160 (or 27 percent of 8,000) patients will not have insurance and may face serious financial harm stemming from MTF medical bills. We anticipate that those uninsured individuals will apply for the MHS MPWP each year.			
*Source: http://www.bls.gov/web/empsit/ceseeesummary.htm (Bureau of Labor Statistics national average hourly wage for all employees June 2023)			

(2) Respondent Burden Related to DD Form 3201–1, “Request for Waiver of Medical Debt, Military Health System Modified Payment and Waiver Program.” This is a new collection. The 10 U.S.C. 1079b statute grants the

Director of the Defense Health Agency discretionary authority to grant waivers to medical bills in certain instances. Accordingly, the DD Form 3201–1 may be used by non-beneficiary patients to apply for a waiver. For patients who are

approved for waivers (not discounts) under the Director of the Defense Health Agency’s discretionary authority, the waived amount, along with the patient’s SSN and address, will be relayed to the IRS.

Part A: ESTIMATION OF RESPONDENT BURDEN		Part B: LABOR COST OF RESPONDENT BURDEN	
1)	Collection Instrument: DD Form 3201-1	1)	Collection Instrument: DD Form 3201-1
a)	Number of Respondents: 1,080	a)	Number of Total Annual Responses: 1,080
b)	Number of Responses Per Respondent: 1	b)	Response Time: 4 minutes
c)	Number of Total Annual Responses: 1,080	c)	Respondent Hourly Wage: \$33.58
d)	Response Time: 4 minutes	d)	Labor Burden per Response: \$2.24
e)	Respondent Burden Hours: 72 hours	e)	Total Labor Burden: \$2,417.76
2)	Total Submission Burden	2)	Overall Labor Burden
a)	Total Number of Respondents: 1,080	a)	Total Number of Annual Responses: 1,080
b)	Total Number of Annual Responses: 1,080	b)	Total Labor Burden: \$2,417.76
c)	Total Respondent Burden Hours: 72 hours		
Of the 2,160 anticipated applicants to the program, we anticipate that most will receive a substantially discounted medical bill. However, this estimate is prepared with a worst-case scenario in which half of the applicants desire to apply for a waiver.			

H. Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local

Governments, preempts State law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local Governments.

I. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule

that imposes substantial direct compliance costs on one or more Indian Tribes, preempts Tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This final rule will not have a substantial effect on Indian Tribal Governments.

List of Subjects in 32 CFR Part 220

Accounts receivable, Civilian medical debt, Claims, Health care, Health insurance, Medical billing, Medical debt, Medical debt waiver, Military medical treatment facilities, Military personnel, and Third party collections.

Accordingly, the DoD amends 32 CFR part 220 to read as follows:

PART 220—MEDICAL BILLING FOR HEALTHCARE SERVICES PROVIDED BY DEPARTMENT OF DEFENSE MILITARY MEDICAL TREATMENT FACILITIES TO CIVILIAN NON-BENEFICIARIES

■ 1. The authority citation for part 220 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1095, 1097b(b), 1079b; 31 U.S.C. 3711, 3717; and 42 U.S.C. 2651.

■ 2. The part heading is revised to read as set forth above.

■ 3. Add § 220.12 to read as follows:

§ 220.12 Medical billing for healthcare services provided by DoD Military Medical Treatment Facilities to civilian non-beneficiaries.

(a) *Applicability.* (1) This section applies to all persons who receive reimbursable care in a military medical treatment facility (MTF) on or after June 21, 2023, and who are not covered beneficiaries of the Department of Defense (DoD) as defined in § 220.14, other than persons who receive care in an MTF pursuant to an agreement between the United States and a foreign government or other entity.

(2) This section does not apply to third persons (or their insurers) with a tort liability under the Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. 2651) or third-party payers under 10 U.S.C. 1095. The discounts and waivers implemented by this section may not be used to reduce the value of the care and treatment that is recoverable from those third persons (or their insurers) under the FMCRA or 10 U.S.C. 1095.

(b) *Definitions.* (1) *Military Health System (MHS) Modified Payment and Waiver Program (MPWP).* The MHS MPWP is a DoD program to implement an enacted Fiscal Year 2023 National Defense Authorization Act (NDAA–23) amendment to section 1079b of title 10, United States Code (U.S.C.). Section 716

of the NDAA–23 amended 10 U.S.C. 1079b to require, inter alia, the Director of the Defense Health Agency (DHA) to reduce fees that would otherwise be charged to civilian non-beneficiaries for medical care according to a sliding scale and to implement a catastrophic fee waiver to prevent severe financial harm. It also granted the Director of the DHA with discretionary authority to issue waivers of fees for medical care if the provision of such care enhances the knowledge, skills, and abilities (KSAs) of healthcare providers.

(2) *Covered payer.* A third-party payer or other insurance, medical service, or health plan.

(3) *Covered by a covered payer.* A medical item or service is deemed to be covered by a covered payer when:

(i) The patient possesses health insurance that is in effect on the date(s) that the item or service was provided;

(ii) The health insurance plan provides coverage for the geographic area where the care was delivered;

(iii) The care provided to the patient is an item or service covered by the terms of the insurance plan, and;

(iv) The health insurance plan provides coverage for care rendered in a U.S. Government/DoD facility;

(v) The insurer agrees to pay the facility directly;

(vi) The insurer agrees to provide the facility with an Explanation of Benefits (EOB) that details how the insurer processed the claims according to the insurance plan; and

(vii) The patient authorizes the DoD to file insurance claims against the insurance policy.

(4) *Non-covered item or service.* A medical item or service that is not covered by the terms of the insurance plan.

(5) *Third-party payer and insurance, medical service, or health plan* have the meaning given those terms in 10 U.S.C. 1095(h).

(6) *Knowledges, Skills, and Abilities (KSAs).* KSAs are a set of clinical skill requirements that a healthcare provider needs in order to provide medical care or treatment in the deployed environment. The extent to which a patient's care enhances KSAs will be determined via the DD Form 3201–1A by competent medical authority at the treating MTF.

(7) *Reasonable value of medical care.* Reasonable value of medical care is defined in § 220.8. The reasonable value of medical care is based on the amount billed by the MTF before application of any sliding scale discount, catastrophic fee waiver, or other discount or waiver under this section.

(c) *Notifications concerning MHS MPWP.* The Assistant Secretary of Defense for Health Affairs (ASD(HA)) will maintain a public website containing information about the MHS MPWP, applicable forms (with links to the forms), and a fee discount calculator. The DoD will notify non-beneficiary patients of the availability of the MHS MPWP. Information about the MHS MPWP will be posted in MTFs (e.g., in waiting rooms and information desks) and included in DoD patient invoices.

(d) *Requirement to complete a DD Form 2569.* MTFs will present the DD Form 2569, "Third Party Collection Program/Medical Services Account/Other Health Insurance," to all patients. It will also be available at https://www.esd.whs.mil/Directives/forms/dd2500_2999/. All patients (regardless of insurance status) must complete the DD Form 2569.

(1) Before applying for the MHS MPWP, all patients (regardless of health insurance status) must fully complete (including by signing) the DD Form 2569 and ensure that a current and accurate DD Form 2569 is on file with the applicable MTF. Successful completion of these steps is a condition of eligibility for the MHS MPWP.

(2) For patients with health insurance, the DoD will file insurance claims on behalf of the patient. Patients with health insurance who do not consent to allowing the DoD to file health insurance claims on their behalf will not be eligible for the MHS MPWP (inclusive of the discount and waiver portions).

(3) The DoD may use a completed DD Form 2569 for multiple episodes of care. Unless a DD Form 2569 completed within the preceding 12 months for the patient is available, the DoD will solicit an updated DD Form 2569 from patients who receive a subsequent episode of care from the MTF. However, the lack of an updated form will not preclude the DoD from filing additional claims against encounters for the patient.

(e) *Notifications on medical invoices.*

In addition to any notifications otherwise already required by law, regulation, or DoD policy, all DoD invoices will notify patients that—

(1) Patients must consent to DoD filing insurance claims on their behalf to be eligible for the MHS MPWP;

(2) The DoD will suspend fee assessment and patient billing actions against the debtor for up to 120 days while the DoD is pursuing an insurance claim or claim against a third-party payer;

(3) For patients who are covered by a covered payer, the DoD will only bill

the patient for the insurer-assigned copays, coinsurance, deductibles, nominal fees, and non-covered services;

(4) The patient demonstrates potential eligibility for the MHS MPWP fee discounts and catastrophic fee waivers by completing and submitting DD Form 2569 and DD Form 3201, which may result in a discount of their medical invoice after pursuit or recovery of claims against third party payers (instructions for demonstrating eligibility, including deadline, will also be included);

(5) In addition to sliding fee discounts and catastrophic fee waivers, patients may request a waiver under 10 U.S.C. 1079b(b) by submitting a DD Form 3201–1, “Request for Medical Debt Waiver, Military Health System Modified Payment and Waiver Program.” Patients may be considered for a partial or full waiver if they previously applied to and were approved for the MHS MPWP discount program, and it did not sufficiently mitigate financial harm and if the applicable care provided is determined to enhance the KSAs of DoD healthcare providers, as confirmed by competent medical authority competent medical authority at the MTF that provided the care. Confirmation will be done by the competent medical authority on the DD Form 3201–1A. Waivers under 10 U.S.C. 1079b(b) may result in information reporting to the Internal Revenue Service and issuance of a Form 1099–C, Cancellation of Debt. The waived amount(s) may constitute gross income to the patient under 26 U.S.C. 61;

(6) If fees or charges (including those reduced under the MHS MPWP) become delinquent due to non-payment, the DoD will establish a debt for the delinquent amount and commence efforts to collect the established debt, which may include transfer to the Department of the Treasury in accordance with applicable authority; and

(7) That invoices issued after reduction or waiver of charges under the MHS MPWP will reflect the date by which an unpaid account will become delinquent.

(f) *DoD medical billing rates.* Annually, the ASD(HA) publishes the rates that DoD uses for medical billing. Except for reasons listed in § 220.8(f) or (g) of this part, the DoD rate will be used for all non-beneficiary billing, including billing to either the insurer or patient.

(g) *For non-covered items or services.* In any instance where an item or service is not covered by a covered payer, the DoD will bill the patient for the full amount of the service.

(h) *For patients who are potentially covered by a covered payer.* In any instance where a patient submits a DD Form 2569 that indicates that the patient possesses valid health insurance, the DoD will suspend any collections against the patient to allow time for the claim remittance to be processed by the insurer and for a valid EOB to be received, or until 120 days have passed since filing for payment from the insurance company, whichever comes first. Upon receipt of an EOB, the DoD will bill the patient only for those amounts that are designated by the insurance company as a copay, coinsurance, deductible, nominal fee, or non-covered service. If insurance remittance and an EOB are not received within 120 days of filing of a claim, the DoD will deem the item or service to be a non-covered service. If insurance remittance and an EOB are received after 120 days have elapsed, the DoD will deposit the remittance and adjust the patient's account accordingly. The DoD will issue to the patient a revised medical invoice reflecting updated balances. MTFs will engage in standard denials management practices, including providing supporting documentation and participating in appeal processes, to facilitate the resolution of disputed claims.

(i) *Actions when an insurance payment and/or EOB is received.* When the DoD receives an insurance payment and/or an EOB, the DoD will post all payments and adjustments for those items or services that are deemed as covered by a covered payer against the bill in the manner prescribed by the EOB. The DoD will bill the patient for any remaining copays, co-insurance, deductibles, nominal fees and non-covered services.

(j) *Application for the MHS MPWP (DD Form 3201).* All DoD invoices generated for non-covered beneficiaries will include a statement that all patients applying for the MHS MPWP must complete DD Form 3201 and must include instructions on how to apply (i.e., the deadline and where to submit the application). Processing of the application will be logged on the last page of the DD Form 3201. Applicants to the MHS MPWP will be notified of the status of their application via the following methods:

(1) For approved applications, the DoD will issue to the patient a modified medical invoice reflecting the adjusted balance due after applying the sliding fee and/or catastrophic fee waiver and including a revised (reset) payment due date. The invoice modified to reflect fee adjustments or waiver under the MHS MPWP will include notification of the

requirement to transfer delinquent debts to the Department of the Treasury if, after any modification under the MHS MPWP, an unpaid invoice becomes delinquent.

(2) For disapproved applications, the DoD will issue a letter reflecting the reason why the application was disapproved. The letter will inform the patient of their right to reapply should their financial circumstances change.

(k) *Requirements to apply to the MHS MPWP.* (1) To apply to the MHS MPWP all patients must:

(i) Complete a DD Form 2569 (even in cases where the patient possesses no health insurance). Insurance remittances must be applied before the patient can be considered for the MHS MPWP.

(ii) Complete a DD Form 3201, “Application for Military Health System Modified Payment and Waiver Program.”

(iii) Attach a copy of the patient's (or guarantor's if the patient is a minor) most recently filed Federal Income Tax Return to the DD Form 3201.

(iv) Attach a copy of the patient's (or guarantor's if the patient is a minor) last two pay stubs.

(v) Indicate whether their injury/disease was caused by a third party and provide explanatory information.

(2) Patients applying for the MHS MPWP are required to certify whether or not they filed a Federal Income Tax Return for the preceding year.

(i) If the patient did not file a Federal Income Tax Return for the preceding year, the patient must certify this in the space provided on the DD Form 3201.

(ii) If the patient has no verifiable income, the patient must certify this and provide a certification of their current annual income amount in the space provided on the DD Form 3201.

(iii) When the patient has certified to having no verifiable income and has neither a tax return nor pay stubs, other information may be used to validate the patient's lack of income including, but not limited to, the last two bank statements (savings and checking), or a Social Security benefits letter verifying that no benefits are being received.

(iv) If the patient believes that hospitalization/care occurred as the result of an action for which another party may be responsible, then to be eligible for the MHS MPWP, the patient must agree to cooperate and assist the United States to recover the cost of care from said party in the space provided on the DD Form 3201.

(l) *Basis to assign a Sliding Fee Discount/Catastrophic Fee Waiver—(1) MHS Discount Calculator.* Once a year, the ASD(HA) will promulgate an MHS Discount Calculator. The initial

calculator will assign a 100 percent sliding fee discount and no stratified nominal fee to applicants to the MHS MPWP whose annual household income is at or below 100 percent of the applicable year's Federal Poverty Guidelines (FPGs); and a 100 percent sliding fee discount plus a stratified nominal fee to applicants whose annual household income is greater than 100 percent and at or below 400 percent of the FPGs current at the time of application. Applicants with annual household income of greater than 400 percent of the applicable year's FPGs will not be eligible for a sliding fee discount; but may be eligible for a catastrophic fee waiver.

(2) *Catastrophic Fee Waiver.* For applicants who exceed the 400 percent threshold but whose household income is at or below 600 percent of the FPGs, the calculator will assign an ASD(HA)-approved maximum percentage that may be charged monthly based on the patient's monthly household income. The maximum percentage will be set to 5 percent. The monthly household income will be multiplied by 5 percent and the result will be multiplied by 36 months to derive the amount of downward adjustment to the patient's bill. Amounts that exceed the recalculated amount will be waived. If the original bill is less than the recalculated bill, the original bill will remain as the balance owed.

(3) *Nominal fee.* Once a year, the ASD(HA) will publish a stratified nominal inpatient and outpatient fee. The nominal fee will be assigned in any case where the sliding fee results in a 100 percent waiver of the medical invoice and the patient's income is above 100 percent and up to 400 percent of the applicable year's FPGs. Stratified nominal fees are generally established in a manner that is equitable with what military retirees enrolled in the TRICARE program would be required to pay in the private sector for comparable services. Nominal fees do not apply to catastrophic fee waivers. The initial nominal stratified fees are as follows:

TABLE 1 TO PARAGRAPH (I)(3)

Household income falls within the below Federal poverty guidelines	Inpatient fee	Outpatient fee
0%–100%	\$0	
101%–120%	750	50
121%–140%	1,250	50
141%–160%	2,000	50
161%–180%	3,000	50
181%–200%	4,000	50
201%–220%	5,000	50
221%–240%	6,000	50
241%–260%	7,000	50
261%–280%	8,000	50
281%–300%	9,000	50
301%–320%	10,000	50
321%–340%	11,000	50
341%–360%	12,000	50
361%–380%	13,000	50
381%–400%	14,000	50

(m) *Notification of approved/disapproved MHS MPWP applications.* Unless additional time is needed (e.g., to verify a patient's documentation), the DoD shall generally determine whether a patient has demonstrated eligibility for the MHS MPWP within 30 business days of receipt of the complete application. The DoD will suspend DoD collection actions (excluding the processing of insurance claims) against the patient during the review.

(1) For approved applications, the DoD will issue to the patient a modified medical invoice reflecting the adjusted balance due after applying the sliding fee and/or catastrophic fee waiver. The invoice modified to reflect fee adjustments under the MHS MPWP will include notification of the requirement to transfer delinquent debts to the Department of the Treasury if, after any modification under the MHS MPWP, an unpaid invoice becomes delinquent.

(2) For disapproved applications, the DHA will issue a letter by U.S. mail to the patient's last known address

reflecting the reason why the application was disapproved. The letter will inform the patient of the right to reapply should the patient's financial circumstances change.

(n) *Collection in installments.* Patients approved for a sliding scale fee reduction or catastrophic fee waiver shall have amounts collected in installments for a term not to exceed 72 months. Patients may choose to pay their balance in a lump sum payment.

(o) *Application for a 10 U.S.C. 1079b(b) waiver—(1) Basis for a waiver.* Waivers may be granted when:

(i) The patient has provided the DoD with a completed DD Form 2569 (even for patients who possess no valid health insurance) and applicable insurance payments have been applied;

(ii) The patient has previously submitted a completed application to the MHS MPWP (32 CFR 220.12(k)) and was approved for any applicable discounts;

(iii) The patient submitted a DD Form 3201–1, "Request for Medical Debt

Waiver, Military Health System Modified Payment and Waiver Program," requesting waiver of already discounted fees; and

(iv) A DoD competent medical authority at the treating MTF confirms in writing (on the DD Form 3201–1A, "MHS Modified Payment and Waiver Program (MPWP) Medical Skills Sustainment Scoring Worksheet") that the care provided to the patient enhanced the KSAs of the DoD healthcare provider. The completed DD Form 3201–1A yields whether a partial or full waiver of already discounted fees may be applied.

(v) If the conditions in paragraphs (o)(1)(i) through (iv) are met, the Director of DHA may exercise discretionary authority to waive the medical invoice.

(2) *Method to request a waiver.* Patients must submit a completed DD Form 3201–1, "Request for Medical Debt Waiver Military Health System Modified Payment and Waiver Program." All DoD invoices will include

the address where a patient may submit a waiver request.

(3) *Response to a request for waiver.* Unless additional time is needed (e.g., to verify a patient's documentation), the DoD shall generally make a decision on the request within 90 days. The DoD will provide a response in writing to the patient, as well as a copy of the medical invoice reflecting the balance due. Waivers that are approved under 10 U.S.C. 1079b(b) will require reporting to the IRS and issuance of an IRS Form 1099-C when required by 26 U.S.C. 6050P.

(p) *Debts transferred to Treasury that are subsequently processed through insurance.* In any instance where a debt is transferred to Treasury and a lower balance is assigned to a Treasury-managed debt due to a claim being subsequently processed through insurance, the DoD shall recall the debt back to the DoD for management actions and notify Treasury to delete the debt from its systems and reverse any adverse reporting that occurred against the debt.

(q) *Delinquent Accounts.* Delinquent accounts will be processed in accordance with the Debt Collection Improvement Act of 1996 and its implementing regulation 31 CFR parts 900–904 (Federal Claims Collection Standards).

(r) *Applications for MHS MPWP Received for Delinquent Accounts Transferred to the Department of the Treasury.* Individuals may still submit an application for the MHS MPWP after their account has been transferred to the Cross-Servicing Program (“Cross-Servicing”) of the Department of the Treasury, Bureau of the Fiscal Service; however, any reductions to the medical invoice from the MPWP may be subject to interest, penalties, and costs. When patients apply to the MHS MPWP after their accounts were transferred to Cross-Servicing, their debts will remain at Cross-Servicing unless and until the DoD determines that they are eligible for a reduction under the MHS MPWP. The DoD may recall the debt from Cross-Servicing after it determines that the debt is eligible for a reduction under the MHS MPWP. Patients may request reconsideration for the MHS MPWP when their financial circumstances appear to have significantly changed.

(s) *Reporting to IRS and Furnishing of IRS Forms 1099-C (Cancellation of Debt).* The DoD will report to IRS, and furnish to patients, IRS Forms 1099-C for all 10 U.S.C. 1079b(b) waivers issued during the previous calendar year where required by 26 U.S.C. 6050P. IRS reporting will not be done for portions of a bill which have been adjusted

downwards due to insurance processing, or by assignment of a sliding fee/catastrophic fee waiver to the debt under 10 U.S.C. 1079b(c)(2) or (3). The IRS Forms 1099-C will reflect amounts waived under the DHA Director's discretionary authority.

(t) *Refunds not permitted for amounts previously paid.* Except for circumstances specified in paragraphs (p) and (u)(3) of this section, financial relief under the MHS MPWP may only be granted for amounts still due by the patient; an application for financial relief cannot be used to obtain a refund for any amounts previously paid.

(u) *Claims involving tortfeasors and third-party payers.* No discount or waiver of fees under 10 U.S.C. 1079b shall be interpreted to be applicable to tortfeasors under the FMCRA, 42 U.S.C. 2651, or third-party payers under 10 U.S.C. 1095.

(1) For patients who indicate that their injury/disease was caused by a third party, DoD MTFs will follow procedures established under the Medical Affirmative Claims program.

(2) Patients who have a remaining balance after insurance remittances or recoveries from third-party tortfeasors may apply for relief of any remaining medical debt.

(3) Payments toward the medical debt that were made by the patient prior to settlement of the claim with the tortfeasor will be offset against any balances owed by the patient or may be refunded to the patient if no balance is owed.

Dated: February 4, 2026.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026–02437 Filed 2–5–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2025–0070]

Drawbridge Operation Regulation; San Bernard River, Brazoria County, Texas

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Union Pacific Railroad (UPRR) drawbridge that crosses the San Bernard River, mile

20.7, near Brazoria, TX. UPRR is requesting to remotely operate the drawbridge from their train dispatch center located in Spring, TX. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding this deviation.

DATES: This deviation is effective from February 6, 2026 through April 7, 2026.

Comments and related material must reach the Coast Guard on or before April 7, 2026.

ADDRESSES: You may submit comments identified by docket number USCG–2025–0070 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Douglas Blakemore, Bridge Management Branch Chief, Coast Guard Heartland District at Douglas.A.Blakemore@uscg.mil, 504–671–2127.

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

The Union Pacific Railroad vertical lift drawbridge crosses the San Bernard River, mile 20.7, near Brazoria, TX. The bridge is currently operated by a bridge tender at the site of the drawbridge and opens on signal; except that, from 10 a.m. to 2 p.m. and 10 p.m. to 2 a.m., the draw opens on signal if at least three hours-notice is given. This bridge at mean high water has a vertical clearance of 22 feet in the closed to boat position, a vertical clearance of 56 feet in the open to boat position and a 52 foot horizontal clearance. The bridge operates according to 33 CFR 117.984. The San Bernard River is used primarily by small recreational and fishing boats. Boats can and do pass beneath the bridge when the draw is in the closed to vessel position, and it currently opens about 1 time per day.

UPRR has requested to operate this drawbridge from their railroad dispatch center located in Spring, TX. UPRR has installed a remote operation system at the bridge and at the remote control center in Spring, TX. Eight cameras have been installed at the bridge; one per tower at each corner of the bridge approaches as well as 4 cameras that look under the bridge as well as up and down stream. The cameras are equipped with thermal imaging to assist with

visibility during inclement weather. There are two sets of microwave type send-receive sensors that are installed to detect vessels under the bridge. The microwave boat detections sensors are connected to the UPRR signal system with input provided from the signal system to the bridge control system. The remote control station monitors the cameras, microwave system and communicates to boats with VHF radio and telephone.

During this test, the bridge will be operated by a bridge tender located in the UPRR Train Dispatch Center. A bridge tender will also be stationed at the bridge site to open and close the bridge if needed.

Boats and vessels will contact the remote bridge operator to open the draw on VHF-FM channel 9 or at the phone number posted on the bridge.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2025-0070 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

View material in the docket. To view documents mentioned in this deviation

as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of this deviation. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Dated: January 30, 2026.

Douglas A. Blakemore,

*U.S. Coast Guard, Bridge Administration
Branch Chief Coast Guard Heartland District.*
[FR Doc. 2026-02365 Filed 2-5-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2025-0309]

Drawbridge Operation Regulation; Old Brazos River, Brazoria County, Texas

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating regulation that governs the Union Pacific Railroad (UPRR) drawbridge that crosses the Old Brazos River, mile 5.3, near Brazoria, TX. UPRR is requesting to remotely operate the drawbridge from their train yard located in Freeport, TX. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding this deviation.

DATES: This deviation is effective from February 6, 2026 through April 7, 2026.

Comments and related material must reach the Coast Guard on or before April 7, 2026.

ADDRESSES: You may submit comments identified by docket number USCG-2025-0309 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Douglas Blakemore, Bridge Management Branch Chief, Coast Guard Heartland District at Douglas.A.Blakemore@uscg.mil, 504-671-2127.

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

The Union Pacific Railroad vertical lift drawbridge crosses the Old Brazos River, mile 5.3, near Freeport, TX. The bridge is maintained in the open-to-boat position and is lowered to allow trains to pass. This bridge at mean high water has a vertical clearance of 10 feet in the closed to boat position, a vertical clearance of 71 feet in the open to boat position and a 228 foot horizontal clearance. The bridge operates according to 33 CFR 117.975. The Old Brazos River is used primarily by small recreational. The bridge lowers about 12 times per day to allow trains to pass.

UPRR has requested to operate this drawbridge from their railroad yard located next to the bridge. UPRR has installed a remote operation system at the bridge and at the railroad yard. Six cameras have been installed at the bridge; one per tower at each corner of the bridge that can be moved to look upriver, downriver and beneath the bridge and 2 cameras that look at the east and west rail tracks. The cameras are equipped with thermal imaging to assist with visibility during inclement weather. There are two sets of sensors that are installed to detect vessels under the bridge: 1 microwave sensor and 1 light detecting and ranging sensor. The remote control station monitors the cameras, sensor systems and communicates to boats with VHF radio and telephone.

During this test, the bridge will be operated by a bridge tender located in the UPRR Train Dispatch Center. A bridge tender will also be stationed at the bridge site to open and close the bridge if needed.

Boats and vessels will contact the remote bridge operator to open the draw

on VHF-FM channel 9 or at the phone number posted on the bridge.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2025-0309 in the search box and click "Search." Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

View material in the docket. To view documents mentioned in this deviation as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of this deviation. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Dated: January 30, 2026.

Douglas A. Blakemore,
U.S. Coast Guard, Coast Guard Heartland District, Bridge Administration Branch Chief.

[FR Doc. 2026-02373 Filed 2-5-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2026-0033]

Safety Zone; Annual Fireworks Displays and Other Events in the USCG Heartland District Requiring Safety Zones

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Riverwalk Marketplace/Lundi Gras Fireworks Display, to provide for the safety of life on the navigable waterways during this event. Our regulation for annual safety zones in the USCG Heartland District identifies the regulated area for this event in New Orleans, LA. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans or a designated representative.

DATES: The regulation in 33 CFR 165.801, Table 5, line 1 will be enforced from 6 p.m. through 7 p.m. on February 16, 2026.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander Jacob Gamble, Sector New Orleans, U.S. Coast Guard, 504-269-7251, email Jacob.S.Gamble@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Riverwalk Marketplace/Lundi Gras Fireworks Display from 6 p.m. through 7 p.m. on February 16, 2026. This action is being taken to provide for the safety of life on the navigable waterways during this one-day event. Our regulation for Annual fireworks displays and other events in the USCG Heartland

District requiring safety zones, in 33 CFR 165.801, Table 5, Line 1 specifies the location of the safety zone on the Lower Mississippi River, from Mile Marker 93.0 to 96.0. During the enforcement period, as reflected in § 165.801 (a)-(c), entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the COTP in the enforcement of the safety zone.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period and any changes in the planned schedule via Broadcast Notice to Mariners and actual notice via VHF-FM Channels 16 and 22A.

G.A. Callaghan,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2026-02354 Filed 2-5-26; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2026-0134]

RIN 1625-AA00

Safety Zone; Saginaw River, Bay City, MI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Saginaw River during the upcoming winter months. This zone is needed to cover navigable waters of the Saginaw River within 400 yards upriver and 600 yards downriver of the Lafayette Bridge and is necessary to protect waterway users, recreational vehicles, and mariners from hazards associated with construction of the Lafayette Bridge. Entry of persons on foot or recreational vehicles into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Detroit (COTP).

DATES: This rule is effective from 8 a.m. on February 7, 2026, until 8 a.m. on April 1, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–0134.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email Tracy.M.Girard@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

During winter months, the Saginaw River becomes a popular area for recreational users, particularly for ice fishing, snowmobiling, and other activities conducted on the ice. At the same time, critical bridge construction and maintenance projects often take place during this period, requiring the use of heavy equipment and tug/barges. Specifically, construction crews are working to construct the Lafayette Bridge over the Saginaw River. This construction presents hazards to recreational users and the public at large, as tug and barge traffic will be breaking the ice in the area surrounding the Lafayette Bridge while cranes and heavy equipment work in the area. This activity, especially the frequent icebreaking operations, present hazards to recreational users, particularly those ice fishing, snowmobiling, or conducting other activities on the ice.

Therefore, the COTP is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect personnel and the marine environment in the navigable waters within the safety zone.

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. The final decision to implement this safety zone was reached only recently, following comprehensive consultations with state and local law enforcement authorities to find an alternative route around the safety zone, and we must establish this safety zone by February 7, 2026, to protect personnel and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

For the same reason, 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 is effective from 8 a.m. on February 7, 2026 until 8 a.m. on April 1, 2026. The safety zone covers all U.S. navigable waters of the Saginaw River within 400 yards upriver and 600 yards downriver of the Lafayette Bridge, along the main shipping channel. No recreational vehicles or persons on foot are permitted to enter the safety zone without obtaining permission from the COTP or their designated representative.

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; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 2. Add § 165.T09–0134 to read as follows:

§ 165.T09–0134 Safety Zone; Saginaw River, Bay City, MI.

(a) *Location.* U.S. navigable waters of the Saginaw River, from surface to bottom, within 400 yards upriver and 600 yards downriver of the Lafayette Bridge. Specifically, all waters of the Saginaw River, encompassed by a line connecting the following points beginning at 43°35'4" N, 083°53'56.5" W thence to, 43°35'2.6" N, 083°53'49.1" W thence to, 43°34'37.3" N 083°53'59.9" W, thence to 43°34'38.5" N, 083°54'8" W and along the shoreline back to the beginning point. These coordinates are based on the North American Datum 83 (NAD 83).

(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 Sector Detroit (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. 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 period.* This section is effective from 8 a.m. on February 7, 2026, until 8 a.m. on April 1, 2026.

Dated: February 2, 2026.

Richard P. Armstrong,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2026–02340 Filed 2–5–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2025–1134]

Safety Zone; Chicago Sanitary and Ship Canal, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone, Brandon Road Lock and Dam to Lake Michigan

including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel Chicago, IL, on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 295.5 to Mile Marker 297.5 for Permanent Barrier 1 In-Water Testing to be conducted from February 7, 2026, through February 22, 2026. This action is intended to provide for the safety of life on navigable waterways during electric fish barrier testing. During the enforcement period listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced for the Chicago Sanitary and Ship Canal regulated area in § 165.930(a)(2) from February 7 through February 22, 2026. They will be subject to enforcement each day from 7 a.m. to 11 a.m., and from 1 p.m. to 5 p.m. Dates and times are subject to change or shift due to inclement weather or unforeseen circumstances.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Kyle Goetz, Marine Safety Unit Chicago, U.S. Coast Guard; telephone 630–986–2155, email: D09-SMB-MSUChicago-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone regulation in 33 CFR 165.930 for fish barrier testing from February 7 through February 22, 2026, each day from 7:00 a.m. to 11:00 a.m., and from 1:00 p.m. to 5:00 p.m. The regulated area—the Chicago Sanitary and Ship Canal, Mile Marker 295.5 to Mile Marker 297.5—is a 2-mile portion of the area specified in § 165.930(a)(2). All vessels must obtain permission from the Captain of the Port (COTP) Lake Michigan, or designated on-scene representative to enter, move within, or exit this safety zone during the enforcement time listed in this notice of enforcement. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the COTP Lake Michigan or designated representative. Upon being hailed by siren, radio, flashing light or other means, the operator of a vessel must proceed as directed.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via Broadcast Notice to Mariners. Lieutenant Kyle Goetz may be reached via telephone at 630–986–2155 for any inquiries.

An on-scene Safety Vessel may be reached during operating hours via VHF–FM Channel 16.

R.N. Macon,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2026–02335 Filed 2–5–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket No. USCG–2026–0034]

Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone for all navigable waters within 350 yards of the Left Descending Bank (LDB) of the Lower Mississippi River (LMR) Mile Marker (MM) 94.4 to MM 95.7, Above Head of Passes (AHP), New Orleans, LA from February 14, 2026 through February 17, 2026. This security zone provides security and protection for visiting personnel during the events related to Mardi Gras celebrations. During the aforementioned periods, no person or vessel may enter this security zone unless authorized by the Captain of the Port New Orleans (COTP) or a designated representative.

DATES: The regulations in 33 CFR 165.846 will be enforced from 12:01 a.m. on February 14, 2026, through 11:59 p.m. on February 17, 2026.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander Jacob Gamble, Sector New Orleans, U.S. Coast Guard, 504–269–7251, email Jacob.S.Gamble@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a security zone in 33 CFR 165.846 for events related to Mardi Gras Celebrations from February 14, 2026, through February 17, 2026. This action is being taken to provide security and protection for visiting personnel during the events related to Mardi Gras. The security zone will cover all navigable waters within 350 yards of the Left Descending Bank on the Lower Mississippi River from MM 94.4 to MM 95.7 AHP, New Orleans, LA. No person or vessel may enter this security zone unless authorized by the Captain of the

Port New Orleans (COTP) or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the COTP in the enforcement of the security zone. To seek permission to enter, contact the COTP or a designated representative by telephone at (504) 365-2209 or VHF-FM Channel 16 and 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period and any changes in the planned schedule via Broadcast Notice to Mariners and actual notice via VHF-FM Channels 16 and 22A.

G.A. Callaghan,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2026-02338 Filed 2-5-26; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2025-0101; FRL-12600-02-R9]

Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze State Implementation Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of the regional haze state implementation plan (SIP) revisions submitted by the Nevada Division of Environmental Protection (NDEP) on August 12, 2022 (“2022 Nevada Regional Haze Plan”) and on May 28, 2025 (“2025 SIP Supplement”), as satisfying applicable requirements under the Clean Air Act (CAA) and the EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. These revisions address the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of

preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The revisions also address other applicable requirements for the second implementation period of the regional haze program.

DATES: This final rule is effective on March 9, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2025-0101. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Emily Millar, 880 Front Street, San Diego, CA 92101, Geographic Strategies and Modeling Section (ARD-2-2), Planning & Analysis Branch, EPA Region IX, telephone number: (213) 244-1882, email address: millar.emily@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Table of Contents

- I. Background
- II. Public Comments and EPA Responses
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

On August 12, 2022, NDEP submitted the 2022 Nevada Regional Haze Plan, titled “Nevada Regional Haze State Implementation Plan for the Second Planning Period” as a revision to the Nevada SIP to address regional haze for the second implementation period. NDEP made this SIP submission to satisfy the requirements of the CAA’s regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. The EPA found this submission complete on August 16, 2022. On July 27, 2023, NDEP withdrew the reasonable progress determinations for Tracy Generating Station’s Piñon Pine Unit (also known variously as Tracy Unit 4 and Tracy Unit 7) and North

Valmy Generating Station’s Unit 1 and Unit 2. On May 28, 2025, NDEP submitted the 2025 SIP Supplement, titled “Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period,” which includes revised reasonable progress determinations for those two sources. The 2025 Supplement also includes updated permits for three sources, replacing those submitted as part of the 2022 Nevada Regional Haze Plan. On October 23, 2025, the EPA proposed to approve the 2022 Nevada Regional Haze Plan (excluding the portions withdrawn on July 27, 2023) and appendix A (“Air Quality Permits Incorporated by Reference”) of the 2025 Supplement (collectively “the Plan”) into the Nevada SIP.¹ The October 23, 2025 proposal provided background on the requirements of the CAA and RHR, summarized the Plan, and explained the rationale for our proposed action. That background and rationale will not be restated in full here.

II. Public Comments and EPA Responses

The EPA’s October 23, 2025 proposal provided a 30-day public comment period that ended on November 24, 2025. The EPA received nine comments during the comment period: three anonymous comments; one comment from a private individual; a comment from Mid-Atlantic/Northeast Visibility Union (MANEVU); a comment from Citizens Rulemaking Alliance; a comment from Idaho Power Company; a comment from NV Energy; and a joint comment letter signed by the National Parks Conservation Association (NPCA), Sierra Club, Center for Biological Diversity, and Coalition to Protect America’s National Parks. After reviewing the anonymous comments and the comment from the private individual, the EPA has determined that they fail to raise issues germane to the approval of the Plan, which is based on the criteria set forth in the CAA, the RHR and relevant policy documents. Therefore, we have determined that these comments do not necessitate a response, and the EPA will not provide specific responses to these comments. The comments from Idaho Power Company and NV Energy supported the EPA’s proposed action. The EPA acknowledges these supportive comments, which are included in the docket for this action. We respond to the issues raised in the three remaining comment letters received on our proposed rulemaking in this document and the associated response to

¹ 90 FR 48481.

comments (RTC) Document, which is included in the docket for this rulemaking.

We briefly address in this section the following topics that were raised by commenters: (1) whether the EPA's new policy is consistent with the CAA and RHR; (2) whether the EPA sufficiently justified its basis for the new policy; (3) whether the action is nationally applicable or based on a determination of nationwide scope and effect; (4) whether the action departs from national policy without complying with the EPA's consistency regulations at 40 CFR part 56; and (5) whether the Plan meets the applicable statutory and regulatory requirements in accordance with the new policy.

As stated in the proposal, it is now the EPA's policy that, where visibility conditions for a Class I Federal area impacted by a state are below the Uniform Rate of Progress (URP) and the state has considered the four statutory factors, the state will have presumptively demonstrated reasonable progress for the second planning period for that area.² As detailed at length in the RTC Document section III., the EPA's new policy is consistent with the CAA. Pursuant to CAA 169A(a)(4), Congress explicitly delegated to the EPA the authority to promulgate regulations regarding reasonable progress towards meeting the national goal. As some commenters note, to determine the measures necessary to make reasonable progress towards the national visibility goal under 169A(a)(1), Congress mandated "tak[ing] into consideration the cost of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirement."³

The EPA emphasizes that just because a Class I area is below the URP does not mean that a state is relieved of its obligations under the CAA and the RHR to make reasonable progress. In other words, the URP is not a "safe harbor," as that phrase has sometimes been used, because the EPA still must review a state's determination whether additional control measures are necessary to make reasonable progress, determine whether the state submitted those measures for incorporation into the SIP, and evaluate whether the measures are consistent with other provisions in the CAA.

Regarding the basis for the new policy, under *FCC v. Fox Television*, 556 U.S. 502 (2009), an agency's change in policy is permissible if the agency acknowledges the change, believes it to be better, and "show[s] that there are good reasons for the new policy."⁴ In section IV.E.7. of our proposal for this rulemaking, we referred to previous actions, in which we stated our reasons for implementing this new policy.⁵

The decision in *FCC v. Fox* turned primarily on whether the FCC's change in policy would lead to the FCC "arbitrarily punishing parties without notice of the potential consequences of their action."⁶ In this instance, the changed policy is prospective, which addresses the primary concern in *FCC v. Fox*. Additionally, the new policy "aligns with the purpose of the statute and RHR, which is achieving 'reasonable' progress, not maximal progress, toward Congress' natural visibility goal."⁷ Furthermore, we note that the legislative history of CAA section 169A is consistent with our change in policy. The reconciliation report for the 1977 CAA amendments indicates that the term "maximum feasible progress" in section 169A was changed to "reasonable progress" in the final version of the legislation passed by both chambers.⁸

Some commenters also state that this action is incompatible with the EPA's consistency regulations. As discussed in the West Virginia final action⁹ and the RTC Document for this action in response section III.D.1., the EPA's Regional Consistency regulations at 40 CFR part 56, and in particular 40 CFR 56.5(b), are not relevant to this action. 40 CFR 56.5(b) requires that a "responsible official in a Regional office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in application of the act or rule, regulation, or program directive that is *inconsistent* with Agency policy." (emphasis added). As we expressly indicated in the proposal, the approval is *consistent* with the change in agency policy, first announced in *Air Plan Approval; West Virginia; Regional Haze State Implementation Plan for the Second*

Implementation Period. Therefore, there is no obligation under the plain language of the EPA's Regional Consistency regulations for anyone in the Region to seek concurrence from EPA Headquarters to take action consistent with EPA policy. Because these regulations are not relevant to this action, the docket for this rulemaking does not include materials related to compliance with the Regional Consistency process. In addition, this action is not a significant regulatory action subject to a review by the Office of Management and Budget under Executive Order (E.O.) 12866, because it is a SIP approval, which is a category of regulations that has been exempted from review under section 3(d)(4) of E.O. 12866.

This action is "locally or regionally applicable" under CAA section 307(b)(1) because it applies only to a SIP submission from a single state, Nevada.¹⁰ To determine whether an action is "nationally applicable" or "locally or regionally applicable," "court[s] need look only to the face of the agency action, not its practical effects"¹¹ As discussed in the West Virginia final action¹² and the RTC Document for this action in response III.D.4, comments that claim that the EPA "must" publish a finding that this action is "based on a determination of nationwide scope [or] effect" are also unsupported and incorrect. The Supreme Court has recognized that "[b]ecause the 'nationwide scope or effect' exception can apply only when 'EPA so finds and publishes' that it does, EPA can decide whether the exception is even potentially relevant."¹³ As the D.C. Circuit has also stated, the "EPA's decision whether to make and publish

¹⁰ See *Oklahoma v. EPA*, 605 U.S. 609, 620 (2025) (a SIP is "a state-specific plan" and "the CAA recognizes this limited scope in enumerating a SIP approval as a locally or regionally applicable action"); see also, *Am. Rd. & Transp. Builders Ass'n*, 705 F.3d 453, 455 (D.C. Cir. 2013) (describing EPA action to approve a single SIP under CAA section 110 as the "[p]rototypical" locally or regionally applicable action).

¹¹ *EPA v. Calumet Shreveport Refining, L.L.C.*, 605 U.S. 642 (2025) ("[W]e determine an action's range of applicability by 'look[ing] only to the face of the [action], rather than to its practical effects.'" (quoting *Am. Rd. & Transp. Builders Ass'n*, 705 F.3d at 456) and *Oklahoma*, 605 U.S. at 621–22 (2025) (basis for EPA action is not relevant to determining its applicability); see also *Sierra Club v. EPA*, 926 F.3d 844, 849 (D.C. Cir. 2019) and *RMS of Georgia, LLC v. EPA*, 64 F.4th 1368, 1372 (11th Cir. 2023) ("our sister circuits have established a consensus that we should begin our analysis by analyzing the nature of the EPA's action, not the specifics of the petitioner's grievance").

¹² 90 FR 29737, 29740 (July 7, 2025).

¹³ *Calumet Shreveport Refining, L.L.C.*, 605 U.S. at 646 (slip op. at 16), citing *Sierra Club v. EPA*, 47 F.4th 738, 746 (D.C. Cir. 2022).

⁴ 556 U.S. 502, 515.

⁵ 90 FR 48481, 48496 (citing *e.g.*, 90 FR 29737, 29738 (July 7, 2025); 90 FR 20425, 20434 (May 14, 2025)).

⁶ 556 U.S. at 517.

⁷ 90 FR 16478, 16483.

⁸ See Legislative History of the Clean Air Act Amendments of 1977 Public Law 95–95 (1977), *H.R. Rep. No. 95–564*, at 535.

⁹ 90 FR 29737, 29740 (July 7, 2025).

² 90 FR 48481, 48496 (citing *e.g.*, 90 FR 29737, 29738 (July 7, 2025); 90 FR 20425, 20434 (May 14, 2025)).

³ CAA 169A(g)(1).

a finding of nationwide scope or effect is committed to the agency's discretion and thus is unreviewable.”¹⁴ The Administrator has not made and published a finding that this action is based on a determination of nationwide scope or effect. Accordingly, any petition for review of this action must be filed in the United States Court of Appeals for the appropriate regional circuit.

Finally, as detailed in section III.B. of the RTC Document, the Plan meets the applicable statutory and regulatory requirements. As required by the statute, Nevada took into consideration the four statutory factors in CAA section 169A(g)(1) and determined that several existing and new controls for stationary sources were necessary to make reasonable progress.

In addition, the RHR requires states to submit a long-term strategy that addresses regional haze visibility impairment for each mandatory Class I Federal area within the State and for each mandatory Class I Federal area located outside the State that may be affected by emissions from the State,¹⁵ and the statute refers to “a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area.”¹⁶ However, there is no specific statutory or regulatory requirement to identify the precise set of Class I areas that are affected by emissions from Nevada, and there is no requirement to establish a source contribution threshold in identifying those areas. In this case, NDEP appropriately identified affected out-of-state Class I areas, as we explain in section IV.A.3. of the RTC Document. The EPA believes NDEP has reasonably documented its out-of-state Class I area contributions, and that, with one possible exception discussed in the RTC at response section IV.B., emissions from Nevada do not impact any Class I area whose 2028 RPG for the most impaired days is above the URP.

In conclusion, as discussed in more detail in the responses at section III.B. of the RTC Document, Nevada took into consideration the four statutory factors in CAA section 169A(g)(1) and selected several control measures as necessary for reasonable progress.

The full text of comments received is included in the publicly posted docket associated with this action at <https://www.regulations.gov>.

www.regulations.gov. The RTC Document, which is also included in the docket associated with this action, provides detailed responses to all significant comments received. The RTC Document is organized by topic. Therefore, if additional information is desired concerning how the EPA addressed a particular comment, the reader should refer to the appropriate section in the RTC Document.

III. Final Action

For the reasons set forth in the October 23, 2025 proposal, the RTC Document, and in this final rule, the EPA is approving the Plan as satisfying the regional haze requirements for the second planning period contained in 40 CFR 51.308(f), (g), and (i). Specifically, we are proposing to approve the 2022 Nevada Regional Haze Plan (excluding the portions withdrawn on July 27, 2023) and appendix A of the 2025 SIP Supplement into the Nevada SIP. Thus, we are incorporating by reference in 40 CFR 52.1470(d) (“EPA-approved State source-specific permits”), the following source-specific requirements:

- NDEP Permit No. AP4911–0194.04 (for Tracy Generating Station), Conditions IV.B.1.a, IV.B.3.f, IV.D.1.a, IV.D.3.f, IV.F.1, IV.L.1.a, IV.L.3.g, IV.M.1.a, IV.M.3.g, V.A, and V.C.
- Clark County DES Authority to Construct Permit for a Major Part 70 Source, Source ID: 3 (for Lhoist North America Apex Plant), Conditions 2.1.1, 2.2.1, 2.2.2, 2.2.3, 3.2.1, 3.2.2, 4.1, 4.3, 4.4.7, 4.4.8, 4.4.15, and 4.4.16.
- NDEP Permit No. AP3274–1329.03 (for Graymont Pilot Peak Plant), Conditions IV.K.1.a, IV.K.3.b, IV.K.4.q, IV.K.4.u, IV.N.1.a, IV.N.3.b, IV.N.4.q, IV.N.4.u, V.S.1.a, IV.S.3.b, IV.S.4.q, IV.S.4.u, and V.B–C.

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 incorporating by reference the regulatory and source-specific provisions described in section III. of this preamble and set forth in the amendments to 40 CFR part 52 in this document. Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP

compilation.¹⁷ 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.¹⁸ Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive 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 proposes to approve 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

¹⁴ *Sierra Club v. EPA*, 47 F.4th at 745; see also *Texas v. EPA*, 983 F.3d 826, 835 (5th Cir. 2020) (“when a locally applicable action is based on a determination of nationwide scope or effect, the EPA has discretion to select the venue for judicial review”).

¹⁵ 40 CFR 51.308(f)(2).

¹⁶ CAA section 169A(b)(2).

¹⁷ See 62 FR 27968 (May 22, 1997).

¹⁸ 42 U.S.C. 7410(k); 40 CFR 52.02(a).

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 (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 April 7, 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, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: January 27, 2026.

Michael Martucci,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends 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 DD—Nevada

■ 2. In § 52.1470:

■ a. Revise paragraph (d); and

■ b. In the table in paragraph (e), under the heading “Air Quality Implementation Plan for the State of Nevada” add the entry “Nevada Regional Haze State Implementation Plan for the Second Planning Period” before the entry “Small Business Stationary Source Technical and Environmental Compliance Assistance Program”.

The revision and addition read as follows:

§ 52.1470 Identification of plan.

* * * * *

(d) EPA approved state source-specific requirements.

EPA-APPROVED NEVADA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Order/permit No.	Effective date	EPA approval date	Explanation
Nevada Division of Environmental Protection				
Tracy Generating Station.	AP4911–0194.04, conditions IV.B.1.a, IV.B.3.f, IV.D.1.a, IV.D.3.f, IV.F.1, IV.L.1.a, IV.L.3.g, IV.M.1.a, IV.M.3.g, V.A, and V.C.	3/23/2022	91 FR [insert Federal Register page where the document begins], 2/6/2026.	Submitted as appendix A.2 of the Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period on May 28, 2025.
Graymont Pilot Peak Plant).	AP3274–1329.03, conditions IV.K.1.a, IV.K.3.b, IV.K.4.q, IV.K.4.u, IV.N.1.a, IV.N.3.b, IV.N.4.q, IV.N.4.u, V.S.1.a, IV.S.3.b, IV.S.4.q, IV.S.4.u, and V.B–C.	6/14/2024	91 FR [insert Federal Register page where the document begins], 2/6/2026.	Submitted as appendix A.3 of the Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period on May 28, 2025.
Clark County Department of Environment and Sustainability				
Lhoist North America Apex Plant.	Authority to Construct Permit for a Major Part 70 Source, Source ID: 3, Conditions 2.1.1, 2.2.1, 2.2.2, 2.2.3, 3.2.1, 3.2.2, 4.1, 4.3, 4.4.7, 4.4.8, 4.4.15, and 4.4.16.	4/30/2025	91 FR [insert Federal Register page where the document begins], 2/6/2026.	Submitted as appendix A.1 of the Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period on May 28, 2025.

(e) * * *

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA ¹				
* * *	* * *	* * *	* * *	* * *
Nevada Regional Haze State Implementation Plan for the Second Planning Period.	State-wide	8/12/2022	91 FR [insert Federal Register page where the document begins], 2/6/2026.	Excluding Executive Summary; subsection 5.4.7; table 5–5; section 5.5, section 5.6, section 7.7; and appendices A, B.5 and B.6.
* * *	* * *	* * *	* * *	* * *

¹ The organization of this table generally follows from the organization of the State of Nevada’s original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

■ 3. In § 52.1488, add paragraph (h) to read as follows:

§ 52.1488 Visibility protection.

* * * * *

(h) *Approval.* On August 12, 2022, the Nevada Division of Environmental Protection (NDEP) submitted the “Nevada Regional Haze State Implementation Plan for the Second Planning Period” (“2022 Nevada Regional Haze Plan”). On May 28, 2025, NDEP submitted the “Nevada Regional Haze Revision to the State Implementation Plan for the Second Planning Period,” (“2025 SIP Supplement”). The 2022 Nevada Regional Haze Plan and appendix A (“Air Quality Permits Incorporated by Reference”) of the 2025 SIP Supplement meet the requirements of Clean Air Act sections 169A and 169B and the Regional Haze Rule in 40 CFR 51.308 for the second implementation period.

[FR Doc. 2026–02344 Filed 2–5–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2025–0061; FRL–12606–02–R9]

Air Plan Revisions; California; Heavy-Duty Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking final action to partially approve and partially disapprove a submission by the State of California to revise its State Implementation Plan (SIP) relating to the control of emissions from non-gasoline combustion vehicles over 14,000 pounds. The EPA’s partial approval will allow the submitted Heavy-Duty Inspection and Maintenance Regulation (“HD I/M Regulation”) to become federally enforceable as part of the California SIP with respect to vehicles registered within the State. The EPA is partially disapproving the submission to the extent that the HD I/M Regulation purports to apply to out-of-state vehicles as inconsistent with the Clean Air Act (CAA), because the State has not provided adequate assurances under CAA section 110(a)(2)(E)(i) that implementation of the SIP is not prohibited by Federal law. The partial disapproval will not trigger CAA section

179 sanctions because the submittal is not a required submission under CAA section 110(a)(2).

DATES: This rule is effective March 9, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2025–0061. 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:

Doris Lo, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; telephone number: (415) 972–3959; email address: lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, the use of “Agency,” “we,” “us,” or “our” refers to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACT—Advanced Clean Trucks
ATA—American Trucking Associations
CAA—Clean Air Act
CAELP—Center for Applied Environmental Law and Policy, Environmental Defense Fund, and Natural Resources Defense Council
CARB—California Air Resources Board
CBI—Confidential Business Information
CCA—Coalition for Clean Air
CCA EJ—Center for Community Action and Environmental Justice and Sierra Club
CCR—California Code of Regulations
CFR—Code of Federal Regulations
CRA—Congressional Review Act
CTA—California Trucking Association
EPA—Environmental Protection Agency
FIP—Federal Implementation Plan
FSOR—Final Statement of Reasons
GVWR—Gross Vehicle Weight Rating
HD I/M—Heavy-Duty Inspection and Maintenance
HDVIP—Heavy-Duty Vehicle Inspection Program
ISOR—Initial Statement of Reasons

MECA—Manufacturers of Emission Controls Association
NTTAA—National Technology Transfer and Advancement Act
NTTC—National Tank Truck Carriers
OBD Standards—California Standards for Heavy-Duty Remote On-Board Diagnostic Devices
OMB—Office of Management and Budget
OODA—Owner-Operator Independent Drivers Association
PRA—Paperwork Reduction Act
PSIP—Periodic Smoke Inspection Program
RFA—Regulatory Flexibility Act
RFP—Reasonable Further Progress
SCAQMD—South Coast Air Quality Management District
SIP—State Implementation Plan
TRALA—Truck Rental and Leasing Association
UCS—Union of Concerned Scientists
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
USMCA—United States-Mexico-Canada Agreement

Table of Contents

- I. Background
 - A. CAA Requirements
 - B. What regulations did the State submit?
 - C. What is the purpose of the submitted regulations?
 - D. What did the EPA propose?
- II. The EPA’s Evaluation and Final Action
- III. Response to Public Comments and Discussion
 - A. Comments in Support of Partial Disapproval
 - B. Comments in Support of Full Approval
 - C. Other Comments
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

A. CAA Requirements

Under the CAA, the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare. The EPA has established NAAQS for certain pervasive air pollutants including ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead, and particulate matter. Under CAA section 110(a)(1), States must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each State. Such plans are referred to as SIPs, and revisions to those plans are referred to as “SIP revisions.” CAA section 110(a)(2) sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emissions limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA.¹ SIP revisions may be submitted to address specific CAA requirements (such as the elements

¹ See CAA section 110(a)(2)(A).

and demonstrations required within an attainment plan), or, as with the State submittal addressed in this action, may be provided to demonstrate emissions reductions to support attainment.

Upon receiving a SIP that meets the completeness criteria in CAA section 110(k)(1)(A), the EPA must determine whether the submission meets all applicable CAA requirements.² The EPA must either approve, conditionally approve, approve in part and disapprove in part, or disapprove a complete State submission within twelve months.³ In addition to the limitations described above, CAA section 110(a)(2)(E) provides that a SIP

must include “necessary assurances” that the State “is not prohibited by any Federal or State law from carrying out such implementation plan or portion thereof” and that the State or applicable State entity has adequate authority, personnel, and funding to carry out adequate implementation of the SIP.

Under California law, the California Air Resources Board (CARB) is the State agency responsible for adopting and submitting SIP revisions to the EPA for review. These include both local rules adopted by county and regional air districts (typically regulating stationary source emissions) and statewide regulations adopted by CARB and other

State agencies. If approved into the SIP, submitted regulations become federally enforceable pursuant to CAA section 110(a)(2)(A).

B. What regulations did the State submit?

CARB submitted the “Heavy-Duty Inspection and Maintenance Regulation”⁴ (“HD I/M Regulation”) as a revision to the California SIP on December 14, 2022.⁵ Table 1 identifies the regulatory sections included in the HD I/M Regulation and addressed by this action with the dates that they were adopted by CARB and submitted to the EPA.

TABLE 1—SUBMITTED REGULATIONS

Agency	Regulation title	Relevant sections of California Code of Regulations (CCR)	Adopted	Submitted
CARB	Heavy-Duty Vehicle Inspection and Maintenance Program.	Amended section: 13 CCR 2193; New sections: 13 CCR 2195, 2195.1, 2196, 2196.1, 2196.2, 2196.3, 2196.4, 2196.5, 2196.6, 2196.7, 2196.8, 2197, 2197.1, 2197.2, 2197.3, 2198, 2198.1, 2198.2, 2199, and 2199.1.	12/09/2021	12/14/2022

The HD I/M Regulation incorporates by reference the “California Standards for Heavy-Duty Remote On-Board Diagnostic Devices” (“OBD Standards”). CARB approved the HD I/M Regulation on December 9, 2021, through Resolution 21–29. Following minor, non-substantive edits by CARB staff,⁶ CARB formally adopted the final HD I/M Regulation and OBD Standards on August 22, 2022, through CARB Executive Order R–22–002. For more information on the HD I/M Regulation, including the EPA’s prior actions on precursor SIP submittals, see section II of the preamble to the proposed action.⁷

C. What is the purpose of the submitted regulations?

Based on ambient data collected at numerous sites throughout the State, the EPA designated certain areas within California as nonattainment for the ozone NAAQS and the particulate matter (PM) NAAQS, which includes both coarse and fine particulate matter (*i.e.*, PM₁₀ and PM_{2.5}).⁸ The EPA redesignated to attainment several areas

in California previously designated as nonattainment for the carbon monoxide NAAQS because these areas attained the standard and are subject to an approved maintenance plan demonstrating how the State will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a large portion of overall emissions of ozone precursors, including volatile organic compounds (VOC) and oxides of nitrogen (NO_x), as well as direct PM and PM precursors, including NO_x, sulfur dioxide (SO₂), and carbon monoxide in the various air quality planning areas within California.⁹ According to CARB, heavy-duty vehicles constitute 52 percent of the on-road NO_x emissions and 54 percent of on-road PM_{2.5} emissions.¹⁰ In addition, according to CARB, out-of-state or out-of-country heavy-duty vehicles constitute approximately half of the total number of heavy-duty vehicles travelling in the State and approximately 30 percent of heavy-duty vehicle NO_x emissions.¹¹ According to CARB, the HD I/M Regulation is intended to reduce PM_{2.5}

and NO_x emissions from heavy-duty non-gasoline combustion vehicles operating in California to further ozone and PM attainment by areas within the State.¹²

The HD I/M Regulation establishes a comprehensive I/M program for heavy-duty vehicles that is intended to ensure that vehicle emissions control systems on these vehicles are operating as designed and repaired quickly. CARB asserted that this regulatory revision builds on CARB’s current heavy-duty inspection programs, including building on and replacing the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection regulations for heavy-duty vehicles.¹³

The HD I/M Regulation applies to all non-gasoline combustion vehicles above 14,000 gross vehicle weight rating (GVWR) that operate in California. Unlike virtually all prior CARB regulations and similar regulations adopted by other States, the HD I/M Regulation would also apply to vehicles registered out-of-state and out-of-country that operate within the State of

² See CAA section 110(k)(3).

³ *Id.*; CAA section 110(k)(4).

⁴ The State of California more commonly refers to the HD I/M Regulation as the “Clean Truck Check.” See, e.g., CARB, Clean Truck Check (HD I/M), <https://ww2.arb.ca.gov/our-work/programs/CTC> (last visited January 26, 2026).

⁵ Letter (with enclosures) dated December 7, 2022, from Steven S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX (submitted electronically December 14, 2022). The letter and enclosures, which include

the HD I/M Regulation, among other materials, are included in the docket for this rulemaking.

⁶ CARB, Addendum to the Final Statement of Reasons for Rulemaking, “Public Hearing to Consider Proposed Heavy-Duty Inspection and Maintenance Regulation” (October 4, 2022).

⁷ 90 FR 41525, 41528 (August 26, 2025).

⁸ See generally 40 CFR 81.305.

⁹ VOC and NO_x are precursors responsible for the formation of ozone, and NO_x and SO₂ are precursors for PM_{2.5}. SO₂ belongs to a family of compounds referred to as sulfur oxides. PM_{2.5}

precursors also include VOC and ammonia. See 40 CFR 51.1000.

¹⁰ See “Public Hearing to Consider the Proposed Heavy-Duty Inspection and Maintenance Regulation—Staff Report: Initial Statement of Reasons,” October 8, 2021, at I–2 (“Staff Report”).

¹¹ *Id.* at II–2.

¹² *Id.* at II–1.

¹³ 13 CCR 2180 through 2189. These programs are sunset under 13 CCR 2199.1, which is included in the HD I/M Regulation SIP submittal.

California for almost any length of time.¹⁴ Some vehicle categories are exempted, including zero-emission vehicles (*i.e.*, electric vehicles), emergency and military tactical vehicles, and other classes defined by use or purpose. There is a limited 5-day pass-through exception permitting program which contemplates that a “vehicle owner may obtain written approval from the Executive Officer to operate a vehicle for up to five consecutive calendar days without being subject to” 13 CCR 2196.1(a)(1) and (2), which govern the owner operator requirements.¹⁵ The 5-day exemption is available once per calendar year to vehicles with no outstanding enforcement actions. The five days must run consecutively after approval and the application must be sent at least seven business days “prior to the vehicle’s planned travel or entry in California.”¹⁶ Vehicle owners must request the exemption in advance through CARB’s compliance platform by providing a variety of information, including the vehicle’s registration information, vehicle identification number (VIN), relevant dates, and origin and destination information. If granted, the owner must keep the pass document in the vehicle and provide it to CARB inspectors upon request.

The HD I/M Regulation requires owners of heavy-duty vehicles operating in California (including out-of-state and out-of-country vehicles) to report owner and vehicle information to CARB. It also requires owners of heavy-duty vehicles to demonstrate that their vehicle emissions control systems are properly functioning through vehicle compliance tests completed by CARB-approved testers and to periodically submit vehicle compliance test results to CARB. Vehicles equipped with on-board diagnostic (OBD) systems can be tested using OBD data, while older non-OBD vehicles are subject to smoke opacity and visual inspections. Vehicle owners are also required to have a valid HD I/M compliance certificate with the vehicle while operating in California, which they must present to a CARB inspector and/or California Highway Patrol officer upon request.

The HD I/M Regulation also establishes a referee testing network to

provide independent evaluations of heavy-duty vehicles and services for vehicles with inspection incompatibilities or compliance issues. Finally, the HD I/M Regulation describes procedures for HD I/M roadside inspections, including roadside monitoring and field inspections.

D. What did the EPA propose?

On August 26, 2025, the EPA proposed to partially approve and partially disapprove, or, in the alternative, to fully approve, the HD I/M Regulation into the California SIP.¹⁷ While the Agency proposed to find that the submission generally meets applicable requirements of the CAA and implementing regulations, the EPA proposed to partially disapprove because of substantial concerns with allowing provisions in the HD I/M Regulation that purport to regulate vehicles registered out-of-state and out-of-country to become federally enforceable.

Specifically, the EPA proposed that California had not provided necessary assurances that the State is not prohibited by any provision of Federal or State law from implementing the SIP, as required by CAA section 110(a)(2)(E)(i). The Agency proposed that the Commerce Clause of the U.S. Constitution appears to prohibit implementing the HD I/M Regulation because its extraterritorial reach burdens core instrumentalities of interstate commerce, that is, heavy-duty vehicles used in interstate shipping. The Agency noted that the HD I/M Regulation effectively outsources the costs of emissions reductions within California to other States and regulated entities in those States by requiring compliance with California’s inspection and maintenance (“I/M”) regime even when the vehicles are not within California. The Agency also noted that under the structure of CAA section 110, a full approval of the HD I/M Regulation would effectively force regulated entities in other States to comply with California’s HD I/M requirements, rather than the applicable requirements in their respective States, including requirements approved by the EPA pursuant to the CAA. Finally, we proposed that the extraterritorial reach of the HD I/M Regulation appears to abrogate the foreign relation powers vested exclusively in the Federal Government by the U.S. Constitution.

The EPA further proposed that the extraterritorial reach of the HD I/M Regulation is inconsistent with CAA

section 110. The Agency observed that CAA section 110 requires the submission of SIPs by each State and that full approval of the submission would, by making the HD I/M Regulation federally enforceable, potentially result in multiple conflicting sources of obligations. The Agency also noted that the HD I/M Regulation was unusual in this respect and requested comment on all aspects of the proposal, including whether a full approval of the State’s submission would raise additional concerns under any other Federal or State law.

II. The EPA’s Evaluation and Final Action

After reviewing California’s submission and all comments received during the public comment period, the EPA is finalizing a partial approval and partial disapproval that will allow the HD I/M Regulation to go into effect for CAA purposes except to the extent it applies to vehicles registered outside the State. As previously noted, the CAA expressly requires that a SIP submittal “shall” provide “necessary assurances” that the State “is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof.”¹⁸ The EPA cannot approve a SIP submission, thereby making it effective for CAA purposes and federally enforceable, unless “it meets all of the applicable requirements of this chapter.”¹⁹

The EPA determines that California has not provided necessary assurances that the State is not prohibited by Federal law—specifically, the Clean Air Act and the Commerce Clause of the U.S. Constitution—from implementing the HD I/M Regulation to the extent it purports to regulate vehicles registered out-of-state or out-of-country based solely on whether such vehicles traverse California for virtually any length of time. As discussed at proposal and reinforced by several commenters, the State’s submission externalizes the cost of additional emissions reductions (out-of-state vehicles that must comply with California’s I/M regime on an ongoing basis) to achieve localized benefits (additional emissions reductions that assist California in demonstrating attainment of the NAAQS for the benefit of California residents).

The Supreme Court has explained that the “dormant” Commerce Clause prohibits “even nondiscriminatory burdens on commerce” when “those

¹⁴ The HD I/M Regulation permits entities subject to the rule to apply once per calendar year for a 5-day “pass through” exception which must be granted in each instance and on an individualized basis. The EPA notes that California has not provided assurances that this additional compliance step meaningfully changes the coverage of the HD I/M Regulation.

¹⁵ 13 CCR 2196(d).

¹⁶ 13 CCR 2196(d)(1).

¹⁷ 90 FR 41525, 41527–29.

¹⁸ CAA section 110(a)(2)(E)(i).

¹⁹ CAA section 110(k)(3); *see, e.g., Safe Air for Everyone v. EPA*, 488 F.3d 1088, 1093 (9th Cir. 2007) (“Before a SIP becomes effective, EPA must determine that it meets the CAA’s requirements.”).

burdens clearly outweigh the benefits of a state or local practice.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 392 (2023) (Roberts, C.J., concurring in part and dissenting in part).²⁰ Such burdens are of particular concern when they impose costs on interstate trade, see, e.g., *Kassel v. Consol. Freightways Corp.*, 450 U.S. 662, 674 (1981) (plurality op.); *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 445 & n.21 (1978), where “the nature of” the market means that a State regulation generates costs whether or not participants sell into the regulating State, *Nat’l Pork Producers*, 598 U.S. at 400 (Roberts, C.J., concurring in part and dissenting in part), and where a State regulation targets “instrumentalities of interstate transportation—trucks, trains, and the like,” *id.* at 379–80 & n.2 (majority op.); accord *id.* at 392 (Sotomayor, J., concurring in part).

In this context, Congress has exercised its exclusive regulatory authority over interstate commerce by enacting CAA section 110 and related provisions specifying States’ obligations to attain the NAAQS. Under CAA section 110, “each State” must develop and submit a plan for implementing, maintaining, and enforcing the NAAQS “within such State.”²¹ As a general matter, the Clean Air Act assigns national regulation, including the regulation of interstate air pollution and standards-setting for mobile sources, to the EPA. For example, title II of the Act authorizes the EPA to set mobile source standards when certain conditions are met and expressly preempts the adoption or attempted enforcement of State standards (including certification, inspection, and approval requirements for sale, titling, or registration) except through the preemption waiver and waiver adoption processes in CAA sections 177 and 209.²² Similarly, the Act generally does not permit States to

outsource the costs of emissions reductions within their borders onto other States except where expressly authorized.²³ Under CAA section 110(a)(2)(D)(i)(I), for example, States must submit plans to restrict certain emissions within their borders if such emissions contribute significantly to nonattainment in other States.

Here, California’s SIP submission seeks to remedy local nonattainment by extending the State’s regulatory reach to vehicles registered in other States, and even other countries, that happen to traverse the State. As explained at proposal and confirmed in this final action, out-of-state vehicle owners and operators effectively must comply with the HD I/M Regulation given the volume of interstate trucking that passes through California, the uncertainties regarding whether and when a route will cross through California over the course of a year, and the significant penalties associated with failure to comply. This result is not contemplated or authorized by CAA section 110, which requires “each State” to implement the NAAQS “within such State,” and does not fall within any of the exceptional provisions of the Act that contemplate one State reaching into another State in pursuit of air quality improvements within its own borders. This is not a lawful use of the CAA’s SIP provisions, which instruct each State to adopt appropriate controls for that State and prohibit the approval of SIPs not supported by “necessary assurances” of legality under Federal and State law. California may adopt and seek approval of a broad range of strategies to promote NAAQS attainment within the State, including by adopting additional controls for vehicles registered within the State. But it cannot (at minimum, without providing necessary assurances) outsource the costs of local attainment to out-of-state and out-of-country vehicle owners and operators through a regulation that would, if approved, become federally enforceable throughout the country in lieu of adopting additional controls for vehicles registered within the State. Nothing in California’s submission provides necessary assurances that implementing the HD I/M Regulation in full would not contravene Federal law, and California continues to maintain that its submission not only can, but must, be approved and made federally enforceable under the CAA.

While not necessary to the EPA’s determination that the SIP submission fails to provide necessary assurances, the HD I/M Regulation also arguably discriminates against out-of-state vehicle owners and operators by externalizing the costs of achieving the local benefits of NAAQS attainment. Nothing about the regulatory goals of the HD I/M Regulation *required* California to extend compliance requirements to out-of-state vehicles or to make that extension federally enforceable by seeking approval in the State’s SIP. Rather than taking this novel approach, California could have limited its application to vehicles registered within the State and adopted additional controls for vehicles registered within the State (or for other sources that emit the relevant pollutants), thereby achieving significant progress toward NAAQS attainment without raising interstate commerce concerns. Indeed, the HD I/M Regulation includes provisions specific to out-of-state vehicles, and CARB separately estimated emissions reductions attributable to in-state and out-of-state vehicles.²⁴ The choice to extend the regulation to out-of-state and out-of-country vehicles was deliberate and unnecessary to the operation of the regulatory scheme with respect to vehicles registered within the State. In this way, the SIP submittal arguably discriminates against out-of-state vehicles by subjecting them to additional regulatory requirements that apply year-round and regardless of location in exchange for localized benefits. California’s legitimate objective, reducing emissions to comply with its NAAQS obligations under Federal law, does not require regulation of all trucks nationwide that may traverse the State, particularly in a manner in which the burdens of compliance fall disproportionately on out-of-state owners and operators as compared to vehicles registered within the State.²⁵ Put another way, extending

²⁰ As explained at proposal, a majority of the Court in *National Pork Producers* affirmatively retained the balancing test in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), for assessing the validity of State regulations against the “dormant” aspect of the Commerce Clause. 90 FR 41525, 41528 & n.22.

²¹ CAA section 110(a)(1), (2) (emphases added).

²² See CAA sections 209(a) (preempting the implementation or enforcement of vehicle and engine emission standards, including certification, inspection, and other approval requirements), 209(b) (setting out the process for requesting and issuing a preemption waiver), and 177 (authorizing States to elect to implement standards for which a preemption waiver has been granted under certain conditions). Notably, the title II preemption provision includes a savings clause authorizing State regulation of “the use, operation, or movement of registered or licensed motor vehicles,” suggesting a recognition that State regulatory authority is linked to vehicles registered or licensed by the regulating State. CAA section 209(d) (emphasis added).

²³ See generally 13 CCR 2196; see also Comment ID EPA–R09–OAR–2025–0061–0047 (demonstrating how referee locations are “only found in California” and therefore inequitably discriminate against out-of-state residents in both costs imposed and the burdens in seeking to comply).

²⁴ See Cal. Health & Safety Code §§ 44011.6, 44011.7; see also Staff Report, which breaks out said costs and emissions estimates by in-state and out-of-state operators.

²⁵ See Comment ID EPA–R09–OAR–2025–0061–0044; Comment ID EPA–R09–OAR–2025–0061–0001 (pointing out the national character of the proposed regulation). Additionally, commenters asserted that the regulation imposes itself upon the testing apparatus of other States and unfairly burdens their residents with compliance. See Comment ID EPA–R09–OAR–2025–0061–0025 (pointing out infeasibility of out-of-state testers satisfying CARB). Finally, one commenter points out that in order to challenge supposed violations, out-of-state operators “must request a hearing with the CARB Hearing Coordinator and make arrangements to return to California” thus logistically crippling small business operators with

the regulation to out-of-state vehicles serves the illegitimate objective of outsourcing the costs of attaining the NAAQS within California to other States and vehicle owners and operators in those States, rather than identifying additional emissions reduction strategies within the traditional ambit of purely in-state sources encompassed within and creditable to the State of California.

The discrimination at issue here is different in kind from the indirect impacts to interstate commerce permitted by the Supreme Court's Commerce Clause jurisprudence. In *National Pork Producers*, the Court rejected an "almost per se" Commerce Clause challenge to a California law that sought to promote the humane treatment of animals by barring California merchants from selling non-compliant pork within California. 598 U.S. at 367 (majority op.); *see also id.* at 384 (plurality op.) (emphasizing that the law regulated sales within California and that non-compliant producers remained free to "withdraw from that State's market"). In contrast here, the HD I/M Regulation would, if approved into the SIP, apply directly to and be federally enforceable against out-of-state and out-of-country vehicle owners and operators even if they conduct no business in California. Trucks shipping apples from Washington to Arizona, or export goods from Texas to ports on the Pacific Ocean, would be obligated to comply merely because they passed through California. As already discussed, proactive compliance by many out-of-state interstate shippers would be the only practicable option to avoid noncompliance and significant fines. This extraterritorial scope exceeds the localized scope of California's interest. Nor is California's goal of demonstrating compliance with its statutory obligations, thereby avoiding potential bump-ups in nonattainment level by operation of the statute, directly related to the health, safety, or other interests the Court has recognized as grounds for permissible in-state regulation imposing indirect out-of-state burdens. *Id.* at 374–75 (majority op.). Rather, the out-of-state reach of the SIP submission is explicitly tied to more effectively meeting California's obligations under the CAA's NAAQS implementation provisions, including deadlines for attainment and reclassification. And the SIP submission's out-of-state reach pursues that goal by imposing costs on interstate trucking, a function the Court

specifically noted warrants a more exacting analysis. *Id.* at 379 n.2 (majority op.) ("[T]his Court [has] refused to enforce certain state regulations on instrumentalities of interstate transportation—trucks, trains, and the like. . . . Nothing like that exists here. We do not face a law that impedes the flow of commerce. Pigs are not trucks or trains."').²⁶

Regardless of whether the regulation at issue here is discriminatory, a showing of discrimination is not required under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), or related cases. In *National Pork Producers*, a majority of the Supreme Court "le[ft] the courtroom door open to plaintiffs invoking the rule in *Pike*, that even nondiscriminatory burdens on commerce may be struck down on a showing that those burdens clearly outweigh the benefits of a state or local practice."²⁷ And the Court has long recognized special considerations for instrumentalities of commerce (including interstate trucking).²⁸ This line of cases is directly on-point and demonstrates that the HD I/M Regulation at issue here warrants careful consideration. The SIP submittal's intended applicability to interstate trucking beyond the borders of California (and that which passes through California, at least on occasion, owing to the nature of the market) appears to contravene case law evaluating State laws which impose undue burdens upon the instrumentalities of interstate commerce. California provided no assurances to the contrary in its SIP submission and continues to maintain its entitlement to impose such burdens under the CAA. As articulated in greater detail in our responses to comments in section III of this preamble, the EPA views the burdens of a fully approved SIP submission on interstate commerce as significant. Such significant burdens

²⁶ As noted at proposal and confirmed in this final action, the EPA's full approval of the SIP submittal would also threaten to impose conflicting obligations with respect to I/M requirements. *See, e.g., Exxon Corp. v. Gov. of Md.*, 437 U.S. 117, 128 (1978) (distinguishing between the retail market and regulation that impedes the flow of goods and risks "that the several States will enact differing regulations").

²⁷ 598 U.S. at 395–96 (Roberts, C.J., concurring in part and dissenting in part).

²⁸ *See id.* at 379 n.2 (majority op.) ("[T]here exists a strong line of cases that originated before *Pike* in which th[e] Court refused to enforce certain state regulations on instrumentalities of interstate transportation—trucks, trains, and the like."); *see, e.g., Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520, 523–30 (1959) (concerning a State law specifying certain mud flaps for trucks and trailers); *S. Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761, 763–82 (1945) (addressing a State law regarding the length of trains).

outweigh the proposed local compliance benefits of the regulation and therefore run afoul of the Commerce Clause. As one commenter explained: "The program's overreach will result in the potential for de facto regulation of out-of-state rented or leased trucks across the country even though renting and leasing companies have no control [over] whether their trucks' routes include traveling into California. . . . CARB's HD I/M program disproportionately affects out-of-state rental and leasing company operations and finances . . . in clear violation of the Dormant Commerce Clause."²⁹

Unlike virtually all prior CARB regulations and similar regulations adopted by other States, the HD I/M Regulation would apply to vehicles registered out-of-state and out-of-country that operate within the State of California for almost any length of time. Because approval of a SIP makes its requirements federally enforceable,³⁰ the regulation would, in effect, become a Federal regulation enforceable by the EPA (and citizen-suit plaintiffs)³¹ against any owner or operator in all fifty States of any heavy-duty vehicle that may pass through California.³²

As addressed in section III of this preamble, Response to Comments, this would in effect lead to additional compliance costs for heavy-duty vehicle operators in all jurisdictions. Some States have HD I/M provisions that differ from California's in material respects, but none of these have been approved into SIPs.³³ If approved into the SIP in all respects, California's HD I/M Regulation would be federally enforceable to the same extent as other State I/M regulations, including any that may be approved by the EPA in the future pursuant to CAA section 110. The result would be multiple conflicting

²⁹ Comment ID EPA–R09–OAR–2025–0061–0036.

³⁰ CAA section 110(k).

³¹ CAA sections 113, 304.

³² Comment ID EPA–R09–OAR–2025–0061–0035 (highlighting how the SIP creates duplicative regimes across States increasing compliance costs); Comment ID EPA–R09–OAR–2025–0061–0047 (demonstrating how referee locations are "only found in California" and therefore inequitably discriminate against out-of-state residents in both costs and seeking to comply).

³³ *See* 6 NYCRR Subpart 217–5 (New York Heavy Duty Inspection and Maintenance Program), N.J.A.C. 7:27–14 (New Jersey Control and Prohibition of Air Pollution); ORS 815.200–215 (Oregon motor vehicle pollution control); *see also* Comment ID EPA–OAR–2025–0061–0047 ("Existing HD I/M programs, or new programs adopted in the future, may not all have identical requirements, but any discrepancies are likely to have an immeasurable impact on air quality outcomes provided they are target high-emitting vehicles. Greater assurances are needed that the emissions benefits from these separate programs are properly accounted for and do not overlap.").

sources of obligations that are enforceable both within the respective States and federally under the CAA.

Additionally, the SIP would require owners of heavy-duty vehicles to demonstrate that their vehicle emissions control systems are properly functioning through vehicle compliance tests completed by CARB-approved testers and require such owners to periodically submit vehicle compliance test results to CARB to show compliance with the HD I/M Regulation. Vehicles equipped with OBD systems would have to be tested using OBD data, while older non-OBD vehicles would be subject to smoke opacity and visual inspections. Lastly, vehicle owners would be required to have a valid HD I/M compliance certificate with the vehicle while operating in California presentable to a California Highway Patrol officer upon request. As CAA section 202(m) authorizes the EPA to regulate and require such OBD systems for heavy-duty vehicles, the imposition of a State program which would be national in character also risks intrusion into an area reserved to Federal authority.³⁴ The CAA's requirements and procedures for California to seek and obtain a preemption waiver, and for other States to adopt California standards for which preemption has been waived, do not apply to this submission, and nothing in CAA section 110 suggests that the statute's provisions for SIP development and submission can function as a workaround for the requirements of CAA sections 177 and 209.

The impact of California's HD I/M Regulation on vehicles registered out-of-state (and out-of-country) and on interstate shipping is significant. The HD I/M Regulation adds significant costs to operation of heavy-duty vehicles even within California. According to the CARB Staff Report, the HD I/M Regulation will cost \$4.12 billion between 2023–2050, with a maximum annual cost of \$350 million in 2024. Many of these costs relate to heavy-duty vehicle testing, repair, and compliance fees.³⁵ But this analysis, which seeks to balance these costs against the benefits of promoting local

NAAQS compliance, improperly weighs the benefits to California against costs imposed nationwide. As commenters point out, overcompliance costs and unknowing violations risk fines and burdens imposed outside the borders of California. The EPA notes that many heavy-duty vehicles covered by the regulations at issue are used for purposes of interstate shipping, and that maintenance of those vehicles could occur in any number of States, meaning the burdens of compliance could be felt across the country and even in other countries. The outsourcing of costs and burdens to other States in pursuit of local benefits via the SIP misunderstands the ambit of State regulation and the Commerce Clause limits on the State's powers. The regulatory regime imposed by the SIP, which reports in-state benefits against conservative estimates of out-of-state burdens, calls into question the entirety of the State's cost-benefit analysis as addressed more fully in section III of this preamble.³⁶

Contrary to claims made by some adverse commenters, the EPA need not specify a less discriminatory approach for California to follow that would comply with the Commerce Clause and therefore render the SIP approvable under the CAA.³⁷ Under the *Pike* analysis, the availability of a less discriminatory approach to achieve a regulatory goal is but one of many factors a reviewing court may consider in evaluating whether a State regulation infringes on Federal authority reserved to Congress by the Commerce Clause.³⁸ When relevant, courts generally place the burden on the regulating State to explain why alternatives that are less burdensome on interstate commerce and out-of-state economic activity were not

considered and adopted.³⁹ The EPA is not required to identify alternatives in this context, including because the CAA's requirement for necessary assurances is a mandatory element of a fully approvable SIP submission. In any event, a less discriminatory alternative is both apparent and reflected in the Agency's proposal: California may achieve significant emissions reductions creditable to NAAQS attainment by implementing the HD I/M Regulation to vehicles registered within the State and, as necessary and appropriate, developing additional controls for in-state registered vehicles and potentially other categories of in-state sources. This final action approves the SIP submittal to that extent while, at the same time, disapproving the submittal to the extent that it purports to infringe on interstate commerce by regulating and burdening interstate trucking.

California's submission does not contain necessary assurances to demonstrate that the HD I/M Regulation can be implemented if approved as to out-of-state and out-of-country vehicles without running afoul of Commerce Clause principles, as required by CAA section 110(a)(2)(E). The SIP rests on a misunderstanding of the reach of the State's regulatory authority and the division of authority between the EPA and the States under the CAA, including CAA section 110. California may regulate I/M activities for vehicles registered within the State consistent with Federal law and may submit such regulation for approval to satisfy the State's NAAQS attainment obligations under Federal law. But the EPA cannot authorize California to become a de facto Federal regulator by making the State's HD I/M Regulation federally enforceable through approval into the SIP. Under the circumstances presented here, approval of the SIP would not be consistent with CAA section 110(a)(2)(E).⁴⁰

³⁶ To cite one example, the Center for Community Action and Environmental Justice refused in its comment to acknowledge the modifications needed to CARB's initial cost-benefit estimates in light of recent resolutions enacted by Congress and signed by the President to void EPA preemption waivers for three California mobile-source regulations. The commenter stated without evidence that this recent legislation is illegal. For that reason, among others, the record includes inconsistent data and estimates with respect to the predicted impacts of the HD I/M Regulation. See Comment ID EPA–R09–OAR–2025–0061–0040.

³⁷ See Comment ID EPA–R09–OAR–2025–0061–0039; Comment ID EPA–R09–OAR–2025–0061–0034; Comment ID EPA–R09–OAR–2025–0061–0019.

³⁸ See, e.g., *Hughes v. Oklahoma*, 441 U.S. 322, 338 (1979) (invalidating local regulation under the Commerce Clause despite acknowledging “nondiscriminatory alternatives [that] would seem likely to fulfill the State's purported legitimate local purpose”); *Granholm v. Heald*, 544 U.S. 460, 493 (2004) (discriminatory state regulations may be upheld only after findings that nondiscriminatory alternatives will prove unworkable).

³⁹ See, e.g., *Am. Bev. Ass'n v. Snyder*, 735 F.3d 362, 376 (6th Cir. 2013) (holding that a Michigan product-labeling requirement violated the Commerce Clause by requiring a unique to Michigan labelling system by out-of-state firms “without the consideration of other less burdensome alternatives”).

⁴⁰ Under the *Pike* balancing test, that aspect of the regulation appears to place substantial burdens on interstate commerce that are not justified by local benefits. Nor is it clear that the State has a legitimate interest in extending the regulation to out-of-state and out-of-country vehicles for the purpose of satisfying California's obligations to demonstrate compliance with the NAAQS. Under established precedent, benign State objectives in regulation that burdens interstate commerce must balance against the burdens imposed. See *Raymond Motor Transp.*, 434 U.S. at 445 (finding a State law banning vehicle length, despite its potential safety benefits and the presumption of validity afforded to laws passed within a traditional state domain, to be

³⁴ Comment ID EPA–R09–OAR–2025–0061–0019 (highlighting the creation of conflicting implementation schemes across States imposed by the SIP); Comment ID EPA–OAR–2025–0061–0018 (out-of-state residents being fined for non-compliance with limited options in home State for remediation); Comment ID EPA–R09–OAR–2025–0061–0036 (illustrating how over compliance out of caution is the only prevention from incurring unknown fines from CARB for out-of-state operators); Comment ID EPA–R09–OAR–2025–0061–0048 (pointing out the trespass into Federal authority by CARB's regulation).

³⁵ Staff Report at IX–14.

In response to the proposal, CARB asserted that the HD I/M Regulation, including implementation of its provisions with respect to out-of-state and out-of-country vehicles passing through California, is necessary to demonstrate attainment with the NAAQS in several of the State's air quality regions. According to CARB, the regulation is projected to reduce NO_x emissions statewide by approximately 81 tons per day in 2037 and 110 tons per day in 2050, and directly emitted PM_{2.5} emissions statewide by approximately 0.7 tons per day in 2037 and 0.9 tons per day in 2050. CARB does not clearly delineate between benefits attributable to in-state vehicles and out-of-state and out-of-country vehicles in this calculation presented in comment. The HD I/M Regulation is additionally expected to reduce NO_x emissions in the South Coast Air Basin by approximately 22 tons per day in 2037 and 29 tons per day in 2050, and directly emitted PM_{2.5} emissions by approximately 0.2 tons per day in 2037 and 2050. Finally the HD I/M Regulation is expected to reduce NO_x emissions in the San Joaquin Valley by over 21 tons per day in 2037 and approximately 30 tons per day in 2050, and directly-emitted PM_{2.5} emissions by approximately 0.2 tons per day in 2037 and 2050. But CARB goes on to admit that these regulations extend to out-of-state vehicles by stating that “[o]ver 750,000 vehicles and 260,000 fleets, respectively, are currently registered in the program. The majority of these vehicles and fleets are registered in California.”⁴¹ Thus, CARB acknowledges that the projected emissions reductions attributed to the HD I/M Regulation—which it identifies as needed to discharge statutory obligations to attain the NAAQS—are in no small part reliant on regulating vehicles registered and primarily operating outside of the State. In a comment submission, the Union of Concerned Scientists (UCS) estimates that “[i]n 2025, out-of-state vehicles made up at least 13 percent of [heavy duty vehicles] operating on California's roads and highways [with] . . . out-of-state [vehicles] . . . responsible for more than 34 percent of NO_x emissions

an unconstitutional burden to interstate commerce); *Burlington N. R. Co. v. Nebraska*, 802 F.2d 994, 1001 (8th Cir. 1986) (“Regulations designed for [a] salutary purpose nevertheless may further the purpose so marginally, and interfere with commerce so substantially, as to be invalid under the Commerce Clause.”) (quoting *Kassel*, 450 U.S. at 670 (plurality op.)) (holding a State law banning double-trailers unconstitutional based on interstate burden).

⁴¹ Comment ID EPA–R09–OAR–2025–0061–0045.

and over 39 percent of PM_{2.5}.”⁴² Thus, based on this comment in support of the HD I/M Regulation, over a third of the emission reductions benefits for NAAQS compliance are achieved by impermissibly burdening the citizens and businesses of other States.

Relatedly, the EPA determines that California's submission cannot be approved in full because it conflicts with CAA section 110 and related provisions of the statute. The EPA's concern in this respect is heightened by the structure of CAA section 110 and the way in which a full approval of the HD I/M Regulation would operate on the ground. In effect, an approval would delegate to California the ability to enforce the State's I/M requirements throughout the nation to the extent a vehicle passes through or operates within the State for virtually any length of time. As commenters make clear, the nature of the trucking industry ensures that almost all out-of-state operators would be forced into compliance to avoid unknowing and incidental violations of these requirements. As a result, an approval would effectively force regulated entities in other States to comply with California's HD I/M requirements, rather than the applicable requirements in their respective States, including requirements approved by the EPA pursuant to the CAA.⁴³ That interstate regulatory function is vested exclusively in Congress by the Commerce Clause, and the result of the EPA's approval under the circumstances risks precisely the abrogation of Federal authority that the Supreme Court has held the Commerce Clause prohibits.

The Commerce Clause analysis discussed in this section follows from the Supreme Court's recognition that the Clause contains “a negative command” that forbids “certain state [economic regulations] even when Congress has failed to legislate on the subject.” *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995). Here, Congress has affirmatively legislated on the subject by providing the framework for States to

⁴² Comment ID EPA–R09–OAR–2025–0061–0041; see also Comment ID EPA–R09–OAR–2025–0061–0042 which estimates that “[a]pproximately half of the trucks operating in California are out-of-state or out-of-country” before advocating the “necessit[y] [of] the applicability of the HDIM program [beyond California] to adequately address harmful emissions.” This comment seems to suggest that California has the authority to seek to regulate all jurisdictions globally under this program and should seek to exercise such authority.

⁴³ As noted elsewhere in this preamble and by commenters, burdens on out-of-state and out-of-country owners and operators would be more significant than for in-state vehicles to the extent CARB-approved testers and other necessary compliance steps are not readily available outside California.

implement CAA requirements for attaining the NAAQS, subject to EPA approval. CAA section 110 requires “[e]ach State” to “adopt and submit to the Administrator . . . a plan which provides for implementation, maintenance, and enforcement” of the NAAQS “within such State.”⁴⁴ In addition to the role carved out for “[e]ach State,” Congress vested the EPA with exclusive authority to promulgate standards and regulations relevant to attainment, including the NAAQS themselves under CAA sections 108 and 109 and generally applicable regulations that lower emissions under CAA sections 111 and 202, among other provisions. As discussed at proposal, approving California's HD I/M Regulation in full—and thereby making it federally enforceable—interferes with this statutory scheme by placing California in the driver's seat across all fifty States.

If approved, California's regulation would be federally enforceable against any heavy-duty vehicle that may pass through California, although those vehicles may already be subject to I/M regulations applicable in the State of registration. Thus, a vehicle registered in any other State would be subject to both its own local state laws and the California SIP overlaid and enforceable under Federal law. California law would effectively take precedence over any other State's, and over applicable EPA regulations.

In addition, approval of California's regulation would create an inherent tension with any other State seeking to adopt an HD I/M regulation into a SIP as part of an emissions reduction strategy. Courts have held that all measures used to attain the NAAQS must be included in the relevant State's SIP.⁴⁵ If another State seeks SIP approval for an HD I/M regulation that is less stringent than or different from California's, and if the EPA approves such a SIP submission, vehicles may be subject to multiple federally enforceable I/M requirements that differ from or contradict each other. And if the EPA denies such a SIP submission by another State in order to avoid this result, the approval of California's SIP submission will have effectively barred other States from utilizing the same strategy as California to comply with Federal NAAQS obligations under CAA section 110. California alone would be able to benefit its own residents in complying with NAAQS requirements at the expense of other States' residents.

⁴⁴ CAA section 110(a)(1).

⁴⁵ See *Comm. for a Better Arvin v. EPA*, 786 F.3d 1169, 1176–77 (9th Cir. 2015).

Nor do the CAA's SIP provisions contemplate California using its SIP submission to pressure other States seeking to obtain emissions reductions from an I/M program to adopt regulations identical to California's. Even if another State submitted an identical regulation, it would be unclear whether and how much emissions reductions could be attributed to that State's SIP rather than California's program. The CAA provides specific requirements and procedures where California seeks to obtain a preemption waiver and other States seek to follow California's regulations—CAA sections 177 and 209—that are not applicable to this SIP submission under CAA section 110.

Therefore, pursuant to CAA section 110(k)(3), the EPA is partially approving the HD I/M Regulation into the California SIP to the extent the regulation applies to vehicles registered in the State. This partial approval action incorporates into the California SIP the submitted regulations in table 1 of this preamble and will replace the Heavy-Duty Vehicle Inspection Program⁴⁶ (HDVIP) and Periodic Smoke Inspection Program⁴⁷ (PSIP) that were previously approved by the EPA into the California SIP.⁴⁸ Our partial approval will also incorporate into the SIP the OBD Standards document that is incorporated by reference through the HD I/M Regulation.

Our partial disapproval of the HD I/M Regulation will not result in imposition of either sanctions or a Federal Implementation Plan (FIP). Sanctions are not imposed under CAA section 179(b) because the submittal of the HD I/M Regulation is discretionary (*i.e.*, not required to be included in the SIP), and the EPA need not promulgate a FIP under CAA section 110(c)(1) because the partial disapproval does not reveal a deficiency in the SIP that such a FIP must correct. The submitted regulation has been adopted by the State of California, and our partial disapproval will not by its own force prevent the State from enforcing it within California as a matter of State law.⁴⁹

III. Response to Public Comments and Discussion

The EPA's proposed rulemaking provided a 30-day public comment period, in which we sought comments on all aspects of the proposal, including both proposed alternatives and related issues. During this period, we received a total of 42 comments. This section summarizes and responds to all comments that are germane to this action.⁵⁰

A. Comments in Support of Partial Disapproval

Comment 1: General Support for Partial Disapproval

Several commenters expressed general support for the EPA's proposed partial disapproval of the HD I/M Regulation as applied to vehicles registered outside the State of California for the reasons addressed in the proposed rulemaking. These reasons relate to the EPA's substantial concerns that California had not provided necessary assurances of adequate authority under CAA section 110(a)(2)(E)(i) to implement the HD I/M Regulation as it applies to vehicles registered in other States and other countries consistent with Federal law, including the Commerce Clause and foreign relations powers provisions of the U.S. Constitution, as well as substantial concerns that EPA approval of the HD I/M Regulation could result in conflicts with provisions of other States' SIPs.

Response: The EPA appreciates these comments. For reasons addressed in this preamble and consistent with the primary proposal, we are finalizing a partial approval and partial disapproval of the HD I/M Regulation.

Comment 2: Burdens to Interstate Commerce

Several commenters described specific burdens to interstate commerce that they believed supported partial disapproval of the HD I/M Regulation, including costs to out-of-state vehicles and the industry generally, and difficulties associated with compliance.

The National Tank Truck Carriers (NTTC) expressed concerns related to operational feasibility, noting logistical and legal uncertainty associated with

applying the HD I/M Regulation to vehicles registered outside of California. The commenter described negative impacts of California's Advanced Clean Trucks (ACT) and Low NO_x Omnibus regulations, and stated that applying similar rules to out-of-state vehicles would undermine emission reduction goals and increase costs and operational inefficiencies.

The Bennett Family of Companies described costs associated with testing equipment, testing certification, downtime, administrative burdens, and equipment requirements, which they argue harms efficiency and competitiveness in interstate trade. The commenter also cited delays resulting from roadside enforcement compliance checks and restrictions on non-compliant vehicles, and associated supply chain disruptions particularly for time sensitive freight and deliveries, and noted inefficiencies associated with conflicting State requirements.

The American Trucking Associations (ATA) also described impacts of delays and difficulties associated with testing requirements especially for out-of-state fleets that are located far away from testing facilities and referee services and noted that fleets are sometimes classified as non-compliant despite their best efforts to comply. The commenter stated that the cost and time needed to test vehicles that operate in California for only a few hours or days likely outweigh the emissions benefits to California.

The Owner-Operator Independent Drivers Association (OOIDA) described costs associated with compliance as well as fines for noncompliance, and noted practical difficulties for operators based outside of California to challenge citations issued under the regulations. The commenter included examples of citations issued to businesses located outside of California.

Several commenters noted that costs and penalties associated with the HD I/M Regulation may disproportionately impact small carriers and owner-operators who lack resources to absorb the added expenses.⁵¹ Small proprietors also commented on the disproportionate burdens to interstate commerce they would suffer in being forced of necessity to treat the HD I/M Regulation as a national standard mandating fleet replacement, out-of-state permitting hurdles, fines levied against non-California-based businesses, and downstream burdens to other industries

⁴⁶ CCR Title 13, Division 3, Chapter 3.5.

⁴⁷ CCR Title 13, Division 3, Chapter 3.6.

⁴⁸ 87 FR 27949 (May 10, 2022).

⁴⁹ The EPA's role in this action is limited to determining whether and to what extent the SIP submission is approvable. That analysis turns on determining whether the SIP submission satisfies all applicable requirements of the CAA, including the requirement that California provide "necessary assurances" that the SIP could be implemented consistent with Federal and State law. Thus, this final action is not a determination of the constitutionality of the HD I/M Regulation and should not be read as purporting to decide whether

California may, consistent with the Commerce Clause, continue to enforce the regulation as a matter of State law.

⁵⁰ The comments included one non-germane comment, which we have not addressed, and one comment that included profanity, which we have not addressed and which is not included in the docket for this action. See "Commenting on EPA Dockets," <https://www.epa.gov/dockets/commenting-epa-dockets>.

⁵¹ See generally Comment ID EPA-R09-OAR-2025-0061-0048.

in need of transportation services.⁵² One example provided in a comment from the Truck Renting and Leasing Association (TRALA), explains how a business with an out-of-state rented or leased truck may not even be aware of its fleets operation in California until “the owner’s receipt of a CARB citation . . . [s]uch citations can lead to enforcement actions with potential fines reaching up to \$10,000 per day.”⁵³ Finally, a comment from the California Trucking Association explains the unaccounted for administrative burdens caused by enforcement of the HD I/M Regulation and the practical impossibility of certain carriers to usefully comply with the regulation as promulgated.⁵⁴

Response: The EPA recognizes the substantial compliance costs associated with the HD I/M Regulation, including those to vehicles registered outside the State, and the accompanying burdens to interstate commerce, including those that are unique to or more significant for out-of-state and out-of-country registered vehicles. The impact of California’s HD I/M Regulation on vehicles registered out-of-state and on interstate shipping is undoubtably significant. The HD I/M Regulation adds significant costs to operation of heavy-duty vehicles registered in California. According to a CARB⁵⁵ Staff Report, the HD I/M Regulation will cost \$4.12 billion between 2023–2050, with a maximum annual cost of \$350 million in 2024. Much of these costs relate to heavy-duty vehicle testing, repair, and compliance fee costs.⁵⁶ CARB estimated the total direct costs on single-vehicle fleets and “typical” (*i.e.*, seven-vehicle) fleets. But as articulated by the above comments, CARB’s analysis does not properly account for the myriad costs imposed on out-of-state operators forced to comply with the regulatory program. The cumbersome reporting obligations, fleet updating, and narrow windows for reporting impose additional costs to out-of-state vehicle operators.⁵⁷ To the extent the HD I/M Regulation applies to out-of-state and out-of-country vehicles that pass through California for almost

any length of time, this cost structure would also be imposed on other States and regulated entities in those States. The EPA notes that many heavy-duty vehicles covered by the regulations at issue are used for purposes of interstate shipping, and that maintenance of those vehicles could occur in any number of States, meaning the burdens of compliance could be felt across the country and even in other countries. The overcompliance which the commenters assert such a regime will create represents unwarranted and substantial burdens on out-of-state fleets.⁵⁸

As described in this preamble, our partial disapproval of the HD I/M Regulation considers these costs among other considerations and finds that the substantial burdens placed upon out-of-state instrumentalities of interstate commerce appear to run afoul of the Commerce Clause as explained below in further response to comments. CAA section 110(a)(2)(E) provides that a SIP must include “necessary assurances” that the State “is not prohibited” by any Federal law, and California has not provided such assurances. In accessing compliance with the Federal Constitution, the cost burdens of the SIP support the need for partial disapproval.

While not directly relevant to this rulemaking, we would like to clarify in response to NTTC’s comment regarding California’s ACT and Low-NO_x Omnibus regulations that the HD I/M Regulation does not and legally cannot expand the scope of these regulations to any additional vehicles or areas. These measures were permitted to go into effect by EPA waivers of preemption that were disapproved by Congress and the President under the Congressional Review Act in 2025 and are therefore preempted and without legal force.⁵⁹

Comment 3: Discrimination Under Commerce Clause; Less Burdensome Approaches

Several commenters specifically argued that the HD I/M Regulation violates the Commerce Clause under applicable judicial interpretations, including the presence of less burdensome regulatory approaches.

TRALA argued that the HD I/M Regulation is discriminatory under the Dormant Commerce Clause because it

compels out-of-state rental and leasing businesses to “over-comply” for vehicles that do not enter California in order to ensure that their fleet is in full compliance, because the regulations do not differentiate between the amount of emissions generated by specific trucks (including out-of-state trucks traveling minimally in California), and because requirements to induce vehicle maintenance included in Federal heavy-duty emissions standards enacted in 2022 represent a less discriminatory alternative.

The California Trucking Association (CTA) and ATA suggested alternative regulatory approaches raised during CARB’s development of the HD I/M Regulation that they argue would be less burdensome. These include exemptions for new vehicles, and measures to focus testing and enforcement resources on fleets and vehicles identified as high emitters, and changes to the reporting schedule to better accommodate the time between purchase and physical delivery of new vehicles.

Response: As a general matter, alternative regulatory approaches are outside the scope of this action for reasons described throughout this preamble, including in response to Comment 17. However, the EPA recognizes that courts have considered the availability of less discriminatory approaches as part of Dormant Commerce Clause analysis in some situations. Under the *Pike* balancing test, whether a less discriminatory approach to a regulatory goal was available is but one of many factors a reviewing court may consider in evaluating whether a regulation violates the Commerce Clause. Regardless of that analysis and whether the HD I/M Regulation at issue here could be found to be discriminatory, the assurances provided for the HD I/M Regulation do not satisfy CAA section 110(a)(2)(E)’s requirement that the proposed SIP include necessary assurances that its implementation would not violate Federal law. Regardless of alternative approaches, the portion disapproved by the EPA in this final action appears to fail the current test for a nondiscriminatory law by placing an improper burden on interstate commerce as prohibited by the Commerce Clause and applicable provisions of the CAA representing Congress’ affirmative legislation on the subject. California has not provided necessary assurances to the contrary. As explained previously, there are obvious alternatives for California to achieve its goal of discharging NAAQS-related obligations under Federal law that do

⁵² See generally Comment ID EPA–R09–OAR–2025–0061–0015; Comment ID EPA–R09–OAR–2025–0061–0016; Comment ID EPA–R09–OAR–2025–0061–0018.

⁵³ Comment ID EPA–R09–OAR–2025–0061–0001.

⁵⁴ See generally Comment ID EPA–R09–OAR–2025–0061–0037.

⁵⁵ Staff Report at IX–14.

⁵⁶ Staff Report at IX–18 through 20. CARB states that, according to vehicle registration data, of fleets consisting of at least three vehicles, 75 percent have four to ten vehicles.

⁵⁷ See generally Comment ID EPA–R09–OAR–2025–0061–0037; Comment ID EPA–R09–OAR–2025–0061–0048.

⁵⁸ Comment ID EPA–R09–OAR–2025–0061–0037.

⁵⁹ See H.J. Res 87 (April 30, 2025) (disapproving April 6, 2023 waiver for ACT); H.J. Res 89 (April 30, 2025) (disapproving January 6, 2025 waiver for Low-NO_x Omnibus). On June 12, 2025, President Trump signed these Congressional Review Act resolutions disapproving the waivers. See also Statement by the President June 12, 2025, <https://www.whitehouse.gov/briefings-statements/2025/06/statement-by-the-president/>.

not raise similar constitutional and statutory concerns.

In response to comments from TRALA, we note that the HD I/M Regulation includes a 5-day “pass-through” exception once per calendar year for individual vehicles that travel only minimally within the State. For a fuller articulation of why this yearly “pass-through” provision does not alter the HD I/M Regulation’s national reach or burdens to interstate commerce, please see the discussion in response to Comment 8 and discussion elsewhere in this preamble.

Comment 4: Specific Conflicts With Other State Rules

ATA stated that other counties and States maintain annual or semi-annual inspection and maintenance programs as part of their truck registration process requirements, citing programs in Colorado, New York, and New Jersey. The commenter noted that the HD I/M Regulation presumes noncompliance even for trucks that were recently inspected in another area. The commenter described these programs as redundant and costly, and argued that they raise concerns regarding claimed program benefits.

Response: We appreciate this comment. As described in the preamble to the proposed rule and in this preamble, we considered the possibility of conflicts with other States’ laws as a basis for our final action. The EPA is partially disapproving the SIP submission because California has not provided necessary assurances that the extraterritorial reach of the HD I/M Regulation into other States and burdens imposed on interstate commerce do not violate CAA section 110 and related provisions by infringing upon, or frustrating the implementation of, SIPs submitted by other States and reviewed by the EPA. If approved in all respects, California’s HD I/M Regulation would be federally enforceable to the same extent as other State I/M regulations potentially approved by the EPA in the future pursuant to CAA section 110. The result is potentially multiple conflicting sources of obligations that are enforceable both within the respective States and federally under the CAA.

B. Comments in Support of Full Approval

Comment 5: General Support for Full Approval

Several commenters expressed support for the EPA’s alternative proposal to fully approve the HD I/M Regulation, including its application to

out-of-state and out-of-country vehicles, for the reasons addressed in the preamble to the proposed rulemaking. These comments generally argued that the submittal complies with the CAA and applicable regulations, including in particular that California has provided necessary assurances that it has adequate authority to implement the HD I/M Regulation and that implementation of the HD I/M Regulation would not be prohibited by Federal or State law, as required by CAA section 110(a)(2)(E)(i).

Response: The EPA acknowledges these comments. However, for reasons addressed in the preamble to the proposed rulemaking and this preamble pertaining to the requirement that SIPs must meet all applicable CAA requirements—specially including “necessary assurances” that the State is not prohibited by any Federal law from carrying out the implementation of the SIP—we are finalizing a partial approval and partial disapproval of the HD I/M Regulation. The State did not provide necessary assurances that implementation of the HD I/M Regulation as applied to all non-gasoline combustion vehicles above 14,000 lbs that pass through California, including vehicles registered out-of-state and out-of-country, would not be prohibited by Federal law.

Comment 6: Other Practical Considerations Supporting Full Approval

Several commenters described health and environmental benefits associated with the HD I/M Regulation, as well as other practical considerations in favor of the HD I/M Regulation and/or its approval into the SIP, including those related to the role of the emissions reductions associated with the HD I/M Regulation in regional attainment planning in California. Commenters described health impacts associated with ozone and PM_{2.5} emissions, including disease and premature death, and cited a need for reductions of ozone, PM_{2.5}, and their precursors particularly within the South Coast and San Joaquin Valley nonattainment areas. Commenters described the role of emissions from heavy-duty vehicles generally and from out-of-state heavy-duty vehicles in particular, citing figures from CARB’s SIP submittal and other sources. Commenters pointed to predicted reductions in PM_{2.5} and NO_x associated with the HD I/M Regulation, which commenters asserted are relied upon in several PM_{2.5} and ozone plans, and argued that it would be difficult and costly to obtain equivalent reductions from other mobile or stationary sources. Commenters also cited confusion,

regulatory uncertainty, and other practical concerns that could result from partial disapproval of the HD I/M Regulation.

The Center for Community Action and Environmental Justice and Sierra Club (collectively, “CCA EJ”) argued that a partial disapproval of the HD I/M Regulation would reduce the amount of SIP creditable emissions reductions from the HD I/M Regulation, and that the EPA would be obligated to promulgate a FIP if California fails to submit an attainment demonstration or if the EPA disapproves an attainment demonstration that the State fails to correct.

One anonymous commenter argued that heavy-duty trucks emit the same pollutants regardless of where they are registered, and that not regulating out-of-state vehicles would create a “regulatory loophole” that would unfairly burden in-state vehicles and undermine the State’s ability to address air pollution.

The UCS argued that partial disapproval would be inconsistent with the EPA’s commitment to ensuring that Americans have access to clean air, as described in the first “pillar” of the “Powering the Great American Comeback” Initiative announced in a recent EPA press release.

CARB argued that the HD I/M Regulation has been successfully implemented and has achieved emissions reductions as designed, citing statistics regarding vehicle registration, testing and monitoring results, and costs, and that the HD I/M Regulation is consistent with other CARB in-use regulations that the EPA has previously approved into the SIP. The commenter argued that partial disapproval of the HD I/M Regulation would transfer the obligation to obtain emissions reductions in part to sources regulated primarily by the Federal Government.

Response: We appreciate the considerations raised by the commenters. However, the question before the EPA in this final action is whether the SIP submission may be fully approved, and therefore made federally enforceable, because it does or does not satisfy all applicable requirements of the CAA. The CAA does not authorize the EPA to approve or adopt any provision simply because it may result in projected emissions reductions. For the reasons addressed in the preamble to the proposed rulemaking and in this preamble, we are finalizing a partial approval and partial disapproval of the HD I/M Regulation based on our findings that application of the HD I/M Regulation to vehicles registered outside California does not

meet the applicable criteria for SIP approval.

The EPA does not agree with commenters' assertions that the SIP submission being partially disapproved is consistent with other CARB regulations that have been approved into California's SIP. As noted elsewhere in this preamble, the EPA sought comment at proposal whether California or any other State had received approval for the portion of the SIP submission at issue here, *i.e.*, the application of an I/M program in one State to vehicles registered and primarily operating out-of-state and out-of-country. Commenters did not provide, and the EPA is not aware of, any examples of a State attempting to assert such regulatory authority nationwide or of the Agency making such a submission federally enforceable by approval into a SIP. The submission before us is novel in this respect, and commenters arguing that the regulation operates similarly to prior I/M programs fail to grapple with this unprecedented distinction or the way this novel submission has forced the EPA to grapple with the issues addressed at proposal and in this preamble for the first time.

Furthermore, as explained in this preamble, partial disapproval of the HD I/M Regulation will not result in the imposition of sanctions or require the promulgation of a FIP. Sanctions are not imposed under CAA section 179(b) because the submittal of the HD I/M Regulation is discretionary (*i.e.*, not required to be included in the SIP), and the EPA need not promulgate a FIP under CAA section 110(c)(1) because the partial disapproval does not reveal a deficiency in the SIP that such a FIP must correct. CAA section 110 places the responsibility to implement the NAAQS on "each State" in the first instance, and partial disapproval of the HD I/M Regulation does not trigger a FIP obligation under the statute because this particular submittal is not mandated by the statute. The submitted regulation has been adopted by the State of California, and our partial disapproval will not by its own force prevent the State from enforcing it within California as a matter of State law, as discussed previously. Commenters incorrectly assumed that California's only path to attainment is through the disapproved portion of the SIP submission. Rather, as discussed elsewhere in this preamble, California retains discretion to design programs that promote NAAQS attainment, so long as those programs are consistent with applicable law. This partial disapproval does not prevent California from pursuing additional

reductions through controls on in-state mobile or stationary sources that do not raise the same constitutional and statutory concerns.⁶⁰ If and when California develops such strategies, it must submit them to the EPA for approval to be credited for emissions reductions in connection with NAAQS attainment.

Because we are partially approving the SIP submission to the extent the HD I/M Regulation applies to vehicles registered within the State, this final action allows California to receive credit for those emissions reductions and does not disrupt ongoing implementation efforts within the State as to such vehicles. Additional considerations relating to the benefits of the HD I/M Regulation as relevant to Commerce Clause considerations are provided in our response to Comment 7.

Comment 7: Dormant Commerce Clause—Pike Balancing

Several commenters questioned the EPA's proposed basis for partial disapproval related to concerns that the extraterritorial reach of the HD I/M Regulation is prohibited by the Commerce Clause of the U.S. Constitution. Commenters cited caselaw establishing the Supreme Court's approach to evaluating Commerce Clause issues, including the balancing test outlined in *Pike*. Commenters also pointed to cases considering what kinds of State regulatory burdens to out-of-state interests could run afoul of a Commerce Clause analysis.⁶¹ Commenters argued generally that the HD I/M Regulation does not discriminate against interstate commerce either facially or in purpose or effect, asserting that the HD I/M Regulation generally applies the same requirements to in-state and out-of-state

vehicles and does not otherwise economically advantage in-state vehicles or interests. Several commenters described the HD I/M Regulation as providing a "level playing field" for in-state and out-of-state vehicles, while others argued that the HD I/M Regulation is more stringent for in-state fleets and vehicles because of the "5-day pass" option available to out-of-state vehicles and because of supposedly lower compliance costs for out-of-state fleets.

Several commenters criticized the EPA's analysis for failing to consider in-state benefits of the HD I/M Regulation as documented in the materials included with the State's SIP submittal, arguing that this information is relevant to the *Pike* balancing test or otherwise needed for a Commerce Clause analysis. Commenters argued that the compliance burdens associated with the HD I/M Regulation are not "clearly excessive" relative to local benefits, and that the HD I/M Regulation therefore does not violate the Commerce Clause as applied to out-of-state trucks.

The South Coast Air Quality Management District (SCAQMD) stated that conservative estimates show the health benefits of the HD I/M Regulation to be approximately 11 times the compliance costs. Other commenters described benefits of HD I/M Regulation exceeding costs by approximately 18 times based on CARB estimates included in the SIP submittal, while noting that CARB expects HD I/M Regulation to result in additional benefits not included in that calculation. CCAEJ estimated the benefits of the HD I/M Regulation as applied to vehicles registered outside of California to exceed costs for those vehicles by more than 10 times, citing CARB estimates of the impact of vehicles registered outside of California.

The Center for Applied Environmental Law and Policy, Environmental Defense Fund, and Natural Resources Defense Council (collectively, "CAELP") cited previous unsuccessful Commerce Clause challenges to California pollution-control measures and argued that similar claims brought against the HD I/M Regulation would fail for the same reasons. The commenter also noted that CARB received comments during its development of the HD I/M Regulation that alleged Commerce Clause violations associated with the \$30 compliance fee, and that CARB's response to these comments was consistent with Supreme Court case law that the commenter described as allowing State regulators to charge a flat regulatory fee on interstate commercial trucks.

⁶⁰ CCAEJ cites the Ninth Circuit's decision in *Committee for a Better Arvin* for the proposition that "all measures on which a SIP relies to comply with the Act must be approved by EPA as part of the SIP." Comment ID EPA-R09-OAR-2025-0061-0040. But in that case, the EPA approved a SIP with control strategies based "in significant part on reductions that [would have] been achieved through waiver measures" that were not included in the SIP itself and therefore were not enforceable under the CAA's citizen suit provisions. 786 F.3d at 1176. Nothing in *Committee for a Better Arvin* stands for the proposition that the EPA must approve an unapprovable SIP submission. Rather, that case supports the EPA's position here by establishing that California and other States cannot be credited for emissions reductions in support of NAAQS attainment unless the relevant control strategies have been included in an approved SIP, which means that the control strategies are consistent with applicable CAA requirements.

⁶¹ See, e.g., *Bibb*, 359 U.S. at 523–30 (concerning a State law specifying certain mud flaps for trucks and trailers); *S. Pac. Co.*, 325 U.S. at 763–82 (addressing a State law regarding the length of trains).

CARB offered arguments that the HD I/M Regulation complies with the Commerce Clause and is well within the State's authority. The commenter highlighted the Supreme Court's recent decision in *National Pork Producers* and other cases.⁶² The commenter argued that the HD I/M Regulation does not regulate extraterritorially, that the identified burdens are not "substantial" or "significant" enough to trigger application of the *Pike* balancing test, and that the HD I/M Regulation does not involve discrimination or serious disruptions in the flow of interstate goods. Even if *Pike* balancing were appropriate, the commenter said, the benefits associated with the HD I/M Regulation overwhelm the burdens, and the EPA's supposed failure to consider those benefits would be arbitrary and capricious. Finally, the commenter argued that benefits associated with the HD I/M Regulation would carry added weight in a balancing test because they relate to Federal legislative and executive branch CAA policy.

Response: At proposal, the EPA noted that the Supreme Court's Commerce Clause jurisprudence forbids State laws that place burdens on interstate commerce that are "clearly excessive in relation to the putative local benefits."⁶³ Additionally, in *National Pork Producers*, "six Justices of [the] Court affirmatively retain[ed] the longstanding *Pike* balancing test for analyzing Dormant Commerce Clause challenges to state economic regulations."⁶⁴ A plurality of the Court affirms that "[they] generally leave the

courtroom door open to plaintiffs invoking the rule in *Pike*, that even nondiscriminatory burdens on commerce may be struck down on a showing that those burdens clearly outweigh the benefits of a state or local practice."⁶⁵ This is especially relevant here as the Supreme Court recognized special considerations for instrumentalities of commerce (including interstate trucking).⁶⁶ This line of cases is directly on-point and suggests that the HD I/M Regulation at issue here must receive particularly close review. The submittal's intended applicability to interstate trucking—*i.e.*, operators, businesses, and trucks registered out-of-state and out-of-country that merely pass through California—facially and directly burdens interstate commerce with significant costs and uncertainties. As noted previously, this concern is not limited to the *Pike* analysis or even to Commerce Clause constraints on State authority. Here, Congress has legislated on the subject to providing that "each State" must develop its own plans for implementing the NAAQS "within" its borders and that the EPA, rather than California or any State, is authorized to establish national standards that "level the playing field" and further nationwide environmental goals.

None of the cases relied upon by adverse commenters support the overbroad contention that the HD I/M Regulation is immune to the "necessary assurances" analysis involving the Commerce Clause and the reach of State regulation because, in commenters' view, it is non-discriminatory, does not regulate outside California's borders, and does not unduly burden interstate commerce. For example, CAELP cites several cases that did not decide whether the regulations at issue were infirm under the *Pike* balancing test⁶⁷

and did not involve a regulatory context where, as here, out-of-state and out-of-country registered vehicles must comply with the State's regulatory requirements in other States.⁶⁸ Moreover, these commenters mistake the relevant analysis here—whether California provided "necessary assurances" that its SIP could, if fully approved, be implemented consistent with Federal law—for the distinct question whether courts would invalidate the HD I/M Regulation if presented with constitutional claims. We do not purport to be adjudicating the ultimate constitutionality of the HD I/M Regulation and, by the same token, need not determine that a reviewing court would be certain to invalidate the regulation if presented with such claims in order to conclude that California failed to provide "necessary assurances" that implementation could proceed lawfully if the regulation were approved in full and made federally enforceable. At least one of the cases cited by commenters recognized that the State's regulation "pushes a state's legal authority to its very limits,"⁶⁹ and the CAA does not require the EPA to identify those limits with precision before concluding that a SIP submission is not supported by "necessary assurances" of legality.⁷⁰ Moreover, commenters' arguments do not address the propriety of California's HD I/M Regulation under the CAA, which as a matter of text and structure does not support the conclusion that one State may obtain additional creditable emissions reductions by obtaining approval of a SIP that renders its program mandatory and enforceable in other States against owners and operators registered in those States who

granted a waiver by the EPA under CAA section 209(b)).

⁶⁸ See *Rocky Mt. Farmers*, 730 F.3d at 1080 (addressing fuel standards that applied to fuels used "within the California market"); *Pac. Merch. Shipping Ass'n*, 639 F.3d at 1158–60 (addressing marine vessel regulation that required use of cleaner fuels within California territorial waters).

⁶⁹ *Pac. Merch. Shipping Ass'n*, 639 F.3d at 1162.

⁷⁰ While not necessary to the basis for this partial disapproval, the EPA notes that courts often construe statutes, including those administered by the Agency, to avoid constitutional concerns without determining whether the contrary interpretation would certainly result in a constitutional violation. See, e.g., *Inhance Techs., LLC v. EPA*, 96 F.4th 888, 893–95 (5th Cir. 2024) (citing, among other cases, *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018)). Courts have applied this rationale to Commerce Clause challenges by interpreting State enactments to apply only within the relevant State. See, e.g., *Yamaha Motor Corp. v. Team Bozeman Motorsports & Mont. Power Sports Dealers Ass'n*, 2009 U.S. Dist. LEXIS 147970, at *6 (D. Mont. Aug. 24, 2009) (interpreting Montana regulation governing motorsports vehicle dealers to apply only to dealers operating within the State).

⁶² See Comment ID EPA–R09–OAR–2025–0061–0045 ("To the extent that other burdens—having nothing to do with discrimination—are cognizable under *Pike*, it is "only when a lack of national uniformity would impede the flow of interstate goods." (citing 397 U.S. at 380 n.2)). As explained below, however, this lack of national uniformity and proliferation of burdens on interstate trucking is precisely the concern raised by the application of the HD I/M Regulation to out-of-state and out-of-country registered vehicles, particularly if made federally enforceable by approval into California's SIP. Unlike, for example, the Supreme Court's decision in *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127–28 (1978), the HD I/M Regulation would not apply only to activities within the State and would impact interstate shipping beyond California's borders. Commenters' citation to *California Trucking Ass'n v. Bonta*, No. 24–2341, 2025 WL 1419921 (9th Cir. May 16, 2025) (unpub.), is equally unpersuasive, since that case involved a State law governing truck driver classifications as independent contractors. This case had nothing to do with trucks as instrumentalities of interstate commerce and does not implicate *Pike* or its antecedents.

⁶³ *Pike*, 397 U.S. at 142.

⁶⁴ 598 U.S. at 403 (Kavanaugh, J., concurring in part and dissenting in part); see *id.* at 391 (Sotomayor, J., joined by Kagan, J., concurring in part); *id.* at 394 (Roberts, C.J., joined by Alito, Kavanaugh, and Jackson, JJ., concurring in part and dissenting in part).

⁶⁵ *Id.* at 396 (Roberts, C.J., concurring in part).

⁶⁶ See *id.* at 379 n.2 ("[T]here exists a strong line of cases that originated before *Pike* in which th[e] Court refused to enforce certain state regulations on instrumentalities of interstate transportation—trucks, trains, and the like."); see, e.g., *Bibb*, 359 U.S. at 523–30 (concerning a State law specifying certain mud flaps for trucks and trailers); *S. Pac. Co.*, 325 U.S. at 763–82 (addressing a State law regarding the length of trains).

⁶⁷ Comment ID EPA–R09–OAR–2025–0061–0043; see *Rocky Mt. Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir. 2013) (reversing district court finding of discrimination but remanding for analysis under *Pike*); *Pac. Merch. Shipping Ass'n v. Goldstene*, 639 F.3d 1154 (9th Cir. 2011) (affirming denial of summary judgment of certain constitutional claims regarding marine vessel regulations without addressing *Pike*); *Cent. Valley Chrysler-Keep v. Witherspoon*, 456 F. Supp. 2d 1160, 1183–86 (C.D. Cal. 2006) (granting judgment on the pleadings against challenge to certain CARB emission standards on the ground that Congress authorized California to adopt and enforce such regulations if

may traverse California at some point in time.

Commenters cited to the EPA's approval of California's Warehouse Indirect Source Rule as indicating that we understand the significant role played by heavy-duty vehicles in emissions and NAAQS attainment.⁷¹ But that observation does not support commenters' conclusion that this SIP submission must be approved because it contained "necessary assurances" that its implementation would not violate Federal law. Unlike the regulation at issue in the cited prior approval action, the HD I/M Regulation purports to regulate heavy-duty vehicle owners and operators directly by requiring I/M activities that must necessarily occur outside the State of California notwithstanding the laws of the State in which they are registered or primarily operate.

As articulated in the response to Comment 8 below, the EPA views the burdens of the proposed approval and SIP on interstate commerce as significant; such significant burdens outweigh the proposed benefits of the proposed regulation and run afoul of the Dormant Commerce Clause analysis. The compounding costs of testing, certification, and shipping disruption based on the HD I/M Regulation's mandated downtime, and the litany of administrative burdens across State lines, break down the efficiency of interstate trade and would create a de facto national program.⁷² As articulated by one commenter, it is hard to properly estimate the ballooning costs of compliance due to the difficulties the program unfairly imposes on out-of-state operators. One commenter estimates that citations for non-compliance may not immediately be received and by the time owners are aware of a citation "potential fines [may reach] up to \$10,000 per day depending on the severity and duration of the non-compliance." Such a risk will lead to fleet closure, alteration, and trade breakdown, none of which was accounted for in CARB's analysis.⁷³ And contrary to some commenters' assertions, there is no reason to believe that burdens would be lower for out-of-state or out-of-country registered vehicles than for in-state registered vehicles. Notwithstanding the limited exception for 5-day pass throughs discussed elsewhere in this preamble, such owners and operators will

generally be forced to over comply, and access to CARB-approved testing and compliance mechanisms and operators is necessarily limited for owners and operators that primarily operate at significant distance from California. As one commenter articulated: "The program's overreach will result in the potential for de facto regulation of out-of-state rented or leased trucks across the country even though renting and leasing companies have no control [over] whether their trucks' routes include traveling into California. . . . CARB's HD I/M program disproportionately affects out-of-state rental and leasing company operations and finances . . . in clear violation of the Dormant Commerce Clause."⁷⁴

Comment 8: Dormant Commerce Clause—No Significant Burden

Several commenters argued that by their nature, the compliance burdens associated with the HD I/M Regulation would not qualify as substantial or undue burdens regardless of the degree of associated benefits.

SCAQMD noted that several Supreme Court justices have signaled that *Pike* balancing of benefits and burdens may be inappropriate in the case of truly nondiscriminatory measures and that, regardless, requirements to keep emission control equipment within the operating parameters required by the HD I/M Regulation should not be considered a significant burden, analogizing it to a requirement for tanker trucks to maintain tanks in leak-free condition to prevent the escape of hazardous materials.

An individual commenter questioned how testing for missing and malfunctioning emissions control components that the commenter asserted are already federally required can be considered an undue burden, arguing that drivers who do not want to take the California test can elect not to enter the State.

CAELP challenged the EPA's characterization of the HD I/M Regulation's compliance costs as "undoubtedly significant," arguing that the costs cited are overstated and insufficiently analyzed and do not consider the actual costs to individual operators, calculating that the maximum daily cost to an individual vehicle under the most conservative assumptions would be less than the toll fees assessed by other States.

Response: As explained above, in *National Pork Producers*, "six Justices of [the] Court affirmatively retain[ed] the longstanding *Pike* balancing test for

analyzing Dormant Commerce Clause challenges to state economic regulations."⁷⁵ Under this balancing test, the burdens felt across the nation outweigh the localized benefits to California of more easily discharging its NAAQS attainment obligations under Federal law. The preamble to our proposed rulemaking addresses some of the costs associated with the HD I/M Regulation. Comments from owners and operators in the trucking industry explained that the burdens of applying the HD I/M Regulation to out-of-state and out-of-country registered vehicles will be felt across the entire country. One commenter pointed out that "[b]y nature, trucks are mobile work units that routinely traverse local, state, and international borders. Under the HD I/M program, rented or leased trucks from outside California could potentially enter the state without the knowledge of the rental or leasing company since they are not in control of the vehicles' routes."⁷⁶ Thus, due to compliance costs and the heavy penalties associated with unknowing and incidental violations, out-of-state truckers will be forced to treat California's HD I/M Regulation as a national standard regardless where they concentrate their business. These risks and the attendant burdens are not ameliorated by the HD I/M Regulation's limited pass through exception; rather, the potential for out-of-state and out-of-country registered trucks to apply in advance for a limited "pass through" exemption itself presents burdens, does not comport with the nature of interstate trucking operations, and admits that this aspect of the SIP submission is national in character and unduly burdens truckers in other States and countries who would have to track and amend their routes, dealings, and compliance strategies in the event the program becomes federally enforceable.

As illustrated by comments, the pass through exemption does not ameliorate these concerns in practice as it requires a prior application replete with information which may not be known to the out-of-state and out-of-country operator in advance, imposes planning and waiting obligations in the form of five business days before the grant of prior permission by the CARB Executive, requires the physical display of the granted pass in the vehicle at all times while operating, and only

⁷¹ Comment ID EPA-R09-OAR-2025-0061-0040 (citing 89 FR 73568 (September 11, 2024)).

⁷² See generally Comment ID EPA-R09-OAR-2025-0061-0035.

⁷³ See generally Comment ID EPA-R09-OAR-2025-0061-0036.

⁷⁴ *Id.*

⁷⁵ 598 U.S. at 403 (Kavanaugh, J., concurring in part and dissenting in part); see *id.* at 391 (Sotomayor, J., joined by Kagan, J., concurring in part); *id.* at 394 (Roberts, C.J., joined by Alito, Kavanaugh, and Jackson, JJ., concurring in part and dissenting in part).

⁷⁶ Comment ID EPA-R09-OAR-2025-0061-0036.

contemplates a window of five consecutive days per vehicle per year as the maximum allowance, thus making small fleets incapable of using the exemption regularly. Even large fleets could only use each truck in their possession once per year under this program.⁷⁷

To the extent the HD I/M Regulation applies to out-of-state vehicles that pass through or operate within California for almost any length of time, its cost structure would also be imposed on other States and regulated entities in those States. The EPA notes that many heavy-duty vehicles covered by the regulations at issue are used for purposes of interstate shipping, and that maintenance of those vehicles could occur in any number of States, meaning the burdens of compliance for certain trucking companies to operate in California or merely pass through California will create an economic burden felt throughout the United States. For vehicles merely passing through, the burdens will be felt exclusively by other States. Even for vehicles that intentionally operate within California (*i.e.*, by shipping goods into the State), these costs may make it prohibitively expensive for certain trucking companies to operate in California, thereby creating an economic rippling effect within and outside the State. “This is particularly burdensome for trucks registered out-of-state, which are considered non-compliant unless they test prior to entering the state. These vehicles might operate in California for only a few hours or days, rather than for weeks or months, but must undergo testing to legally enter the state.”⁷⁸ Finally, as explained elsewhere in this preamble, the abstract comparison of benefits and costs in this context should be informed by the nature of the benefits, *i.e.*, allowing California to obtain additional creditable emissions reductions to more easily satisfy its NAAQS-attainment obligations under Federal law. In essence, California is outsourcing the burdens of obtaining this benefit to other States by extending the HD I/M

Regulation to out-of-state and out-of-country registered vehicles. That benefit is not a legitimate use of the SIP program, and it does not comport with the balance struck in the CAA between the roles of individual States and the EPA’s national role.

Comment 9: Dormant Commerce Clause—Extraterritorial Reach

Several commenters challenged the EPA’s specific characterizations of extraterritorial effects of the HD I/M Regulation. Some commenters asserted that HD I/M Regulation has no extraterritorial reach or effect that would be relevant to the Commerce Clause analysis.

SCAQMD characterized the EPA’s position as assuming that any extraterritorial effect is forbidden, which the commenter argues is inconsistent with applicable case law. The commenter cited a Ninth Circuit decision allowing California to ban foie gras produced through force-feeding practices, even though this conduct occurred wholly outside of the State and thus impacted out-of-state conduct. In contrast, the commenter argued, the HD I/M Regulation applies only to conduct within California, does not require actions to be taken outside of California, and has no effect of controlling purely out-of-state actions.

Similarly, CCAEJ argued that under applicable case law, the HD I/M Regulation does not violate the Commerce Clause merely based on its extraterritorial reach, arguing that California has authority to apply its laws to non-residents and out-of-state corporate entities. The Coalition for Clean Air (CCA) described the HD I/M Regulation as an exercise by California of the police power held by States to protect their residents and noted that it does not dictate the activities of any other State.

CAELP argued that the HD I/M Regulation does not regulate extraterritorially because it does not require compliance from vehicles that do not operate inside of California and does not impose any cost on vehicles when they are outside of California. The commenter analogized the EPA’s concerns about the HD I/M Regulation’s extraterritorial reach to saying that California could not enforce its criminal laws against residents of other States traveling through California, or that California could not require out-of-state corporations to register before doing business in the State.

CARB argued that the HD I/M Regulation does not regulate extraterritorially because it does not directly regulate out-of-state

transactions by those with no connection to the State.

Response: The Commerce Clause vests the interstate regulatory authority exclusively in Congress.⁷⁹ The HD I/M Regulation’s extraterritorial application, which would effectively allow California to set a nationwide regulatory standard, as explained in other responses, would represent an abrogation of that unique Federal authority. In addition, the Constitution vests the power over foreign relations exclusively in the Federal Government. The HD I/M Regulation, which applies to all vehicles operating in California, will impermissibly burden vehicles registered in Canada and Mexico and the other States. This is especially pressing in the case of Mexico, which maintains a consulate in California frequented by diplomatic traffic. As explained elsewhere in this preamble, these concerns are heightened by the fact that Congress has legislated on the subject in the CAA by providing that “each State” is responsible for developing a SIP to implement the NAAQS “within” their State, authorizing the EPA to establish national I/M requirements, and allowing for the waiver of Federal preemption only when specific procedural and substantive requirements are met. None of the comments described above presented a valid analogy to the context here, and none can or did substitute for the lack of necessary assurances in California’s SIP submission.

The EPA disagrees with commenters’ assertions that the HD I/M Regulation does not apply extraterritorially. By its terms, the regulatory requirements apply to out-of-state and out-of-country vehicles rather than only in-state registered vehicles, as is generally the case in I/M regimes. This reach was intentional, as California sought to obtain creditable emissions reductions not only from in-state registered vehicles, but also from vehicles registered outside the State. Compliance with the regulatory requirements necessarily contemplates mandating out-of-state and out-of-country conduct, as vehicles must be compliant with the regulation upon entering California or risk substantial penalties. Thus, even before considering that full approval of the SIP submission would make the HD I/M Regulation enforceable outside California against any owner or operator based on allegations that one or more vehicles traversed California, even enforcement within the State of

⁷⁷ Commenters pointed out that typical truck leases are “dependent on flexible transportation contracts to manage variable operations” and that operators would struggle to plan around this exception, as they typically lack certainty as to if and when a truck would cross into California. Comment ID EPA–R09–OAR–2025–0061–0036. Overcompliance would result to avoid “potential fines reaching up to \$10,000 per day.” *Id.*; see also Comment ID EPA–R09–OAR–2025–0061–0023 (citing the impossibility of compliance); Comment ID EPA–R09–OAR–2025–0061–0016 (a single owner operator would need to buy another truck once the 5-day window was closed).

⁷⁸ Comment ID EPA–R09–OAR–2025–0061–0047.

⁷⁹ See *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

California mandates behavior outside the State.

In an illustrative example of the flaws in these commenters' logic, CAELP likens the EPA's concern to "saying California cannot enforce its criminal laws against another state's residents traveling through California or that California . . . cannot require a Delaware corporation to register with the California Secretary of State before transacting business in Los Angeles."⁸⁰ This argument fails to recognize the impact of the EPA's approval of a SIP submission on implementation of the SIP. Because approval makes SIPs federally enforceable, including by citizen plaintiffs, the relevant analogy is not to California enforcing its criminal laws against individuals traversing the State, but to "any person" enforcing California's criminal laws anywhere in the country so long as they allege that an owner or operator's vehicle passed through California at one point in time.⁸¹ The corporate registration analogy is also inapt because the HD I/M Regulation does not contemplate requiring vehicle registration in California as a predicate for being subject to the regulatory requirements. Nor does this comment address the special considerations due to instrumentalities of interstate commerce in the Commerce Clause analysis.⁸² Thus, while "the plurality in *Pork Producers* rejected the argument that any 'practical effect' of controlling the conduct of commerce outside the state is barred"⁸³ it is also true that the HD I/M Regulation, aimed directly at out-of-state instrumentalities—"trucks, trains,

and the like"⁸⁴—is likely barred by both *Pike* and other relevant precedents.

These commenters acknowledge that restrictions upon the instrumentalities of commerce—like trucks—fall under the purview of the Commerce Clause. And as emphasized above, regardless of the existence of discriminatory intent, such restrictions upon instrumentalities of commerce implicate special considerations in the Commerce Clause analysis. As explained in the response to Comment 11, the HD I/M Regulation also "expresses a distinct point of view" on the politically charged issue of vehicle emissions reductions in vehicles registered in and operating outside California and outside the United States. This implicates the foreign affairs powers vested exclusively in the Federal Government.⁸⁵

Comment 10: Dormant Commerce Clause—Special Rules for Instrumentalities of Interstate Transportation

SCAQMD acknowledged recent case law indicating that the Commerce Clause applies with special force to regulations affecting "instrumentalities of interstate transportation," but suggested that relevant cases involved regulations that either had no benefit or conflicted with requirements in other States.⁸⁶ Similarly, CARB cited case law suggesting that courts have invalidated facially neutral State regulations on instrumentalities of interstate transportation only when they were enacted at the instance of, and primarily benefit, in-state interests. The commenters argued that these cases would not support invalidating the HD I/M Regulation.

Conversely, another commenter articulated: "The program's overreach will result in the potential for de facto regulation of out-of-state rented or leased trucks across the country even though renting and leasing companies

have no control [over] whether their trucks' routes include traveling into California. Since CARB's HD I/M program disproportionately affects out-of-state rental and leasing company operations and finances, the program . . . [is] in clear violation of the Dormant Commerce Clause."⁸⁷

Response: The Supreme Court noted in *National Pork Producers* that "there exists a strong line of cases that originated before *Pike* in which th[e] Court refused to enforce certain state regulations on instrumentalities of interstate transportation—trucks, trains, and the like."⁸⁸ These cases and others demonstrate that State laws that burden "instrumentalities of interstate transportation" warrant special consideration under the Commerce Clause and may be invalid even in the absence of discriminatory intent. Commenters did not offer a plausible explanation that the HD I/M Regulation does not squarely implicate this line of cases, or that California must be excused from providing "necessary assurances" that implementing its SIP submittal to out-of-state and out-of-country registered vehicles would not run afoul of applicable law.

Contrary to these commenters' suggestions, full approval of the HD I/M Regulation would necessarily generate conflict with I/M regimes adopted in other States, including both existing programs and programs that other States may seek to incorporate into their SIPs to obtain creditable emissions reductions in the future. If made federally enforceable by approval, "any person" could seek to enforce the HD I/M Regulation by alleging a vehicle passed through California without first complying with the regulation's requirements. As noted above, this would create multiple and conflicting obligations with any State that adopts a different I/M program and improperly pressure other States to adopt an identical program into their SIP, with attendant difficulties in disaggregating which emissions reductions could properly be attributed to which State. Furthermore, the EPA disagrees with commenters' assertions that the HD I/M Regulation involves local benefits that distinguish a potential approval from the State laws at issue in the cited cases. Here, the benefits adhere purely to California by allowing the State to obtain credit for additional emissions reductions beyond those that could be

⁸⁰ Comment ID EPA-R09-OAR-2025-0061-0043.

⁸¹ See CAA sections 304(a) (authorizing "any person" to commence a civil action for alleged violations), 302(e) (defining "person" as any "individual, corporation, partnership, association, State, municipality, political subdivision of a State," as well as any arm of the Federal Government).

⁸² The case law cited by SCAQMD is equally inapplicable here. *Association des Eleveurs de Canard et d'Oies du Quebec v. Bonta*, 33 F.4th 1107, 1118 (9th Cir. 2022), dealt with a State law banning the practice of selling foie gras products in the State of California. The Ninth Circuit dismissed claims asserting a variety of Commerce Clause and preemption arguments because, in that instance, the State law pertained only to what could be sold within California. Thus, that case pertained to the regulation of in-state sales and did not involve instrumentalities of interstate commerce. Additionally, *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070, 1103 (9th Cir. 2013), pertained to the impact of the State's ethanol standards based on the full lifecycle of the production of ethanol fuels. The Ninth Circuit found the law nondiscriminatory despite its practical impact on out-of-state fuel production and remanded for analysis under the *Pike* balancing test. Thus, this analysis does not pertain to instrumentalities of commerce or the burdens a federally empowered SIP would produce on out-of-state parties.

⁸³ Comment ID EPA-R09-OAR-2025-0061-0043.

⁸⁴ *Nat'l Pork Producers*, 598 U.S. at 379–80 & n.2 (majority op.).

⁸⁵ *United States v. Pink*, 315 U.S. 203, 233, (1942) ("Power over external affairs is not shared by the States; it is vested in the national government exclusively.").

⁸⁶ See generally Comment ID EPA-R09-OAR-2025-0061-0039, which cites to *Bibb v. Navajo Freight Lines*, 369 U.S. 520 (1959), *Kassel v. Consolidated Freightways Corp. of Delaware*, 450 U.S. 662 (1981), and *Raymond Motor Transportation, Inc., v. Rice*, 434 U.S. 429 (1978), as examples of such cases. Commenter seeks to limit the *Pike* test to circumstances like those in these cases in which the invalidated State law had no major benefits to the local State. But that is not what these cases say. Rather, they highlight the special scrutiny applied to instrumentalities of interstate commerce like heavy duty trucking. And in each instance, the State law was invalidated despite involving arguably lower burdens than the HD I/M Regulation at issue here.

⁸⁷ Comment ID EPA-R09-OAR-2025-0061-0036.

⁸⁸ 598 U.S. at 379 n.2; see, e.g., *Bibb*, 359 U.S. at 523–30 (concerning a State law specifying certain mud flaps for trucks and trailers); *S. Pac. Co.*, 325 U.S. at 763–82 (addressing a State law regarding the length of trains).

credited by applying the HD I/M Regulation to in-state registered vehicles. Those benefits are purely local, and they are not the type of direct local benefits that courts have previously recognized as legitimate ends. Nor are commenters correct that courts have taken issue with State regulations burdening interstate commerce only when there were no local benefits. Rather, the line of cases discussed above recognizes the centrality of instrumentalities of interstate commerce to the national market envisioned by the Commerce Clause and that local benefits are more difficult to justify in the face of burdening such instrumentalities.

Comment 11: Foreign Relations Powers

Several commenters challenged the EPA's proposed basis for partial disapproval related to concerns that extraterritorial reach of the HD I/M Regulation violates the foreign relation powers vested exclusively in the Federal Government by the U.S. Constitution.

SCAQMD argued that the HD I/M Regulation does not have a prohibited effect on foreign commerce, stating that there is no evidence of discrimination or protectionism, and that California does not seek to provide an advantage for in-state trucks. In response to the EPA's concerns that HD I/M Regulation does not have an exception for diplomatic activities by foreign nationals, the commenter argued that such an exemption is unnecessary because diplomatic immunity is afforded by Federal law external to the CAA or State regulations. The commenter stated that cases interpreting "dormant" aspects of the Foreign Commerce Clause focus on taxes and fees imposed on instrumentalities of international commerce with legal tests that do not apply in this case. The commenter argued that the HD I/M Regulation does not violate the Foreign Commerce Clause as described in these cases because it does not adversely impact the Federal Government's ability to speak with one voice.

CCAEJ argued that the EPA has not identified or considered any international treaties or conventions that would bear on California's authority to adopt operational limitations on mobile sources under the CAA. The commenter stated that the EPA failed to consider in particular the United States-Mexico-Canada Agreement (USMCA), arguing that California would retain its CAA authority to adopt the HD I/M Regulation under provisions of the Agreement specifying that the

environmental law of the United States continues to apply. The commenter included portions of the USMCA language as an attachment.

CAELP argued that the HD I/M Regulation comports with the foreign affairs doctrine, arguing that HD I/M Regulation does not impinge upon the Federal Government's conduct of foreign affairs. The commenter disputed the EPA's characterization of potential conflicts with foreign affairs authorities, arguing that the EPA's position would mean that the Federal Government could block any State policy that it disfavored simply because it might have some marginal effect on foreign entities. According to the commenter, the Supreme Court has rejected this view, finding a violation only where there is a direct impact on foreign relations that could adversely affect the Federal Government's power to deal with relevant problems. The commenter suggested that the EPA's position could also raise separation of powers concerns to the extent it intrudes into Congress' role in establishing the boundaries for States' exercise of personal jurisdiction. The commenter stated that the HD I/M Regulation is not expressly preempted because it does not conflict with any treaties, conventions, executive agreements, or express foreign policies. The commenter further stated that it is not field preempted because it does not intrude on the Federal Government's foreign affairs power under Ninth Circuit case law, because the EPA has not offered any evidence that HD I/M Regulation diminishes the President's power to speak and bargain effectively with other countries, and because it addresses a traditional State responsibility and is not intended to influence policy in other countries.

CARB argued that the EPA has not provided a reasoned basis for partial disapproval related to foreign affairs preemption because it does not cite any treaties or conventions or any potential impacts on relevant Federal policy and because courts recognize conflict preemption only in the face of a clear and definite foreign policy. The commenter noted that the CAA relaxes State planning obligations in areas affected by pollution from foreign countries but does not distinguish State obligations to address emissions based on the nationality of emissions sources. The commenter also argued that the HD I/M Regulation does not unlawfully regulate in the field of foreign affairs because it addresses a traditional State responsibility. The commenter further argued that the HD I/M Regulation does not intrude on the Federal Government's foreign affairs power

because it does not express a distinct political point of view on specific foreign policy matters and does not require a highly politicized inquiry into the conduct of a foreign nation, citing the Ninth Circuit's decision in *Movsesian v. Victoria Versicherung AG*.⁸⁹

Response: The EPA disagrees with the commenters about the compatibility of the HD I/M Regulation's application to out-of-country vehicles with the Constitution's exclusive vestment of the foreign relations power in the Federal Government. In the field of foreign affairs, State regulations may be preempted by means of conflict preemption or field preemption.⁹⁰ Conflict preemption applies when there is "evidence of clear conflict" with a Federal statute, regulation, or policy.⁹¹ Field preemption requires a showing (1) that the real purpose of a regulation falls outside the area of traditional State responsibility and (2) that the HD I/M Regulation intrudes on the foreign affairs power of the government.⁹²

As an initial matter, many of these commenters misstate the scope of California's authority on the subject of mobile-source emissions. CAA section 209 provides that States may not adopt or attempt to enforce emissions standards for vehicles and engines, including requirements related to, among other things, certification and inspection, and the limited exceptions to express preemption are not implicated here. CAA section 110 requires "each State" to adopt SIPs that implement the NAAQS "within" their State, subject to review and approval by the EPA for, among other things, whether the SIPs contain necessary assurances that their implementation would not violate Federal or State law. With respect to national standards, Congress vested the authority to prescribe national emission standards for vehicles and, among other things, I/M requirements for heavy duty vehicles, exclusively with the EPA. For these reasons, the EPA disagrees with commenters' characterizations that California has broad authority to impose operational limits on mobile-source emissions, or that regulating vehicles registered out-of-state and out-of-country is a traditional State responsibility. Commenters again fail to acknowledge the unprecedented quality of California's SIP submission in this

⁸⁹ 670 F.3d 1067 (9th Cir. 2012).

⁹⁰ *Gingery v. City of Glendale*, 831 F.3d 1222, 1228 (9th Cir. 2016).

⁹¹ *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 421 (2003).

⁹² *Movsesian*, 670 F.3d at 1074–75.

respect, or to recognize the impact of a full approval that would render the HD I/M Regulation federally enforceable by “any person” across the nation.⁹³

Given the structure of the statute, approving the HD I/M Regulation in this respect would necessarily compromise the Federal Government’s ability to speak with one voice on the question of mobile-source emissions. In all practical respects, California’s HD I/M Regulation would have the force and effect of Federal law, including as applied to vehicles that enter the United States from foreign countries and pass through California for any length of time, regardless of operations or destination. Full approval of the HD I/M Regulation would, therefore, both conflict with the CAA’s division of responsibility between States and the Federal Government and intrude into a field reserved for the Federal Government by the Constitution.

While the control of pollution within a State’s borders is a traditional State responsibility, the HD I/M Regulation goes well beyond this traditional ambit by its terms and would necessarily exceed the ambit of traditional State responsibility if made federally enforceable by approval into the SIP. In assessing whether a State law falls within the ambit of traditional State authority, courts must “[inquire] into the ‘real purpose’ of the statute” to determine whether the regulatory imposition is merely “garden variety” or exceptional.⁹⁴ Here, the HD I/M Regulation departs from a garden variety approach by imposing I/M requirements on out-of-state and out-of-country registered vehicles that necessarily mandate behavior outside the State of California.

CARB cites to the Ninth Circuit’s decision in *Movsesian* to support its claim that the HD I/M Regulation is not covered by foreign affairs preemption. There, the Ninth Circuit invalidated a

California statute granting State courts the authority to adjudicate Ottoman-era insurance claims made by victims of the Armenian Genocide, finding that the law did not address an area of traditional State responsibility and intruded on the Federal foreign affairs power. Although insurance regulation was a subject of traditional State regulation generally, the statute was intentionally crafted to make California courts “an expeditious, inexpensive, and fair forum” in which to resolve monetary claims.⁹⁵ Here, as in *Movsesian*, the HD I/M Regulation departs from a “garden variety” approach to intrastate pollution regulation by requiring compliance from out-of-state and foreign vehicles to secure to California the benefit of additional creditable emissions reductions in furtherance of demonstrating attainment of the NAAQS.

With respect to CARB’s contention that the HD I/M Regulation avoids intrusion on foreign affairs by not intruding into a politicized inquiry into the conduct of another nation, the EPA disagrees. The HD I/M Regulation “expresses a distinct point of view” on the politically charged issue of emissions reductions—an issue that is hotly debated, both in substance and regulatory response, within the United States, Mexico, and Canada, and among the three nations, as well as internationally.⁹⁶ The HD I/M Regulation also implicates the second prong of this test, which asks whether there has been an intrusion on the Federal foreign affairs power. The HD I/M Regulation “expresses a distinct point of view” on the question by targeting heavy duty vehicles as major emitters that should be subject to increasingly stringent controls—a view with which the Federal Government is entitled to disagree in negotiations with foreign powers.⁹⁷

Comment 12: The EPA Should Not Decide Constitutional Issues

Several commenters suggested that the EPA should not disapprove a SIP measure based on Constitutional issues that fall outside of its area of expertise. Commenters argued that *Pike* balancing is more appropriately handled by courts

and questioned the EPA’s role in adjudicating these issues in advance of a judicial determination of the Constitutional issues.

SCAQMD cited case law describing constitutional challenges as falling outside of agency competence and expertise. The commenter also cited a Supreme Court decision finding that the EPA could not consider claims relating to the technological or economic infeasibility of a SIP submittal and suggested that it would be contrary to this principle for the EPA to introduce a similar analysis through an assessment of Commerce Clause concerns.⁹⁸

CARB argued that the EPA would not be entitled to deference in its interpretation of the Commerce Clause or Foreign Affairs preemption.

Response: The EPA disagrees that the Agency lacks authority to address whether California has provided “necessary assurances” that implementation of its SIP submission in full would not violate Federal or State law. As noted throughout this preamble, CAA section 110 expressly requires that SIP submissions satisfy all applicable requirements of the statute, including the requirement to provide such necessary assurances. We are not “adjudicating” constitutional claims in this action, nor are we invoking deference to constitutional or statutory interpretation. Rather, the EPA is exercising its authority and obligation under CAA section 110 to assess the SIP submission before it for compliance with statutory requirements.⁹⁹

Commenters’ assertions about the EPA’s role in reviewing a SIP submission would lead to untenable results. Absent the ability to analyze

⁹⁸ See generally Comment ID EPA–R09–OAR–2025–0061–0039 (citing *Union Elec. v. EPA*, 427 U.S. 246, 257–58 (1976)). This case does not support the commenter’s argument, however, because it addressed whether the EPA may deny SIP measures limiting emissions from stationary sources within the submitting State on grounds of technological or economic infeasibility and did not involve the concerns presented by California’s novel attempt to obtain creditable emissions reductions by extending its regulatory reason to vehicles registered out-of-state and out-of-country.

⁹⁹ As explained below, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 395 (2024), reinforces that agencies have the power to act when such authority is expressly conferred by statute. That is the case here, since CAA section 110(k) requires the EPA to approve SIP submissions that meet the requirements of the CAA and, conversely, does not authorize the EPA to approve aspects of SIP submissions that do not meet the requirements of the CAA, including the CAA section 110(a)(2)(E) requirement that the State provide “necessary assurances” that implementing the SIP would not violate Federal or State law. Courts have long recognized that the EPA has discretion in construing the undefined phrase “necessary assurances,” and we are not relying here on an invocation of deference to statutory interpretation.

⁹³ Commenter’s argument that the CAA does not distinguish between the national origin of emissions in requiring States to address emissions is similarly flawed. CAA section 110 requires “each State” to implement plans for attaining the NAAQS “within” their State and that plans, among other things, must include necessary assurances that plan implementation would not violate Federal or State law. Because obtaining creditable emissions reductions by imposing I/M requirements on out-of-country registered vehicles would violate Federal law for the reasons explained above, the CAA does not permit States to use this strategy in their SIPs without necessary assurances. CAA section 179B, which authorizes the EPA to determine that a State plan would be sufficient to attain the NAAQS “but for emissions emanating from outside of the United States,” further supports the conclusion that the Federal Government retains the authority to decide when and how to address international emission impacts within the United States.

⁹⁴ *Movsesian*, 670 F.3d at 1074.

⁹⁵ *Id.* at 1067, 1076–77.

⁹⁶ *Id.* at 1077 (noting that Turkey continued to express “great concern” over monetary claims arising out of the United States and other countries).

⁹⁷ *Id.* The premise of California’s SIP submission is that imposing more stringent requirements than required by Federal law will generate creditable emissions reductions beyond those achieved under Federal law.

statutory and constitutional provisions (as elements of Federal law) as applied to a SIP submission, the “necessary assurances” requirement in CAA section 110(a)(2)(E) would be superfluous. Courts have repeatedly recognized that the EPA has considerable discretion in determining whether assurances provided, if any, are sufficient to satisfy this statutory provision, and that determination requires assessing the underlying legal concern. Under commenters’ theory, the EPA would be powerless to disapprove a SIP submission that discriminated on the basis of race in violation of the Fifth Amendment and applicable statutes so long as a State asserted that its submission was lawful. But as CAELP conceded, in the past a violation of the Civil Rights Act was not too speculative to deny the sufficiency of a State’s demonstration.¹⁰⁰ CAELP further admitted that the “EPA has a duty to provide a reasoned judgment as to whether the state has provided ‘necessary assurances,’ but what assurances are ‘necessary’ is left to the EPA’s discretion.”¹⁰¹ In this case, California has not provided necessary assurances that the aspects of the HD I/M Regulation which seek to regulate instrumentalities of commerce outside the State would not violate Federal law.

¹⁰⁰ Comment ID EPA–R09–OAR–2025–0061–0043. CAELP mischaracterizes the EPA’s action in various ways to claim that the Agency lacks legal authority to disapprove a SIP in part for lack of necessary assurances that its implementation would not violate Federal or State law. As noted throughout this preamble, we are acting pursuant to the CAA’s command that a SIP must satisfy all statutory requirements, including by providing such “necessary assurances.” Indeed, CAELP admits that the “EPA has some discretion to determine the sufficiency of evidence that States must provide to make ‘necessary assurances.’” and appears to argue instead that “‘necessary assurances’” are only required when potential illegality is “‘well-defined in advance of the state’s submission.’” As an initial matter, we disagree that the relevant legal issues discussed here are not “‘well-defined’”—Commerce Clause jurisprudence is well established, and the division of authority embodied in the CAA between States and the EPA (including the limitations of the preemption waiver process in CAA sections 109 and 177, the obligation of “each State” to develop SIPs to attain the NAAQS “within” the State, and the EPA’s authority to promulgate national I/M requirements) has been in place for decades. Any novelty in this action arises from California’s unprecedented attempt to circumvent these requirements by imposing what amounts to a nationwide I/M program that secures additional local benefits by imposing burdens on other States and out-of-state and out-of-country operators. Nothing in the text, structure, or logic of the statute precludes the EPA from insisting on necessary assurances simply because no State has ever attempted the same maneuver.

¹⁰¹ Comment ID EPA–R09–OAR–2025–0061–0043 (quoting *El Comité para el Bienestar de Earlimart v. EPA*, 786 F.3d 688, 701 (9th Cir. 2015), and citing *NRDC, Project on Clean Air v. EPA*, 478 F.2d 875, 890–91 (1st Cir. 1973)).

Comment 13: The EPA Misapplies CAA 110(a)(2)(E)(i)

Several commenters challenged the EPA’s proposed finding that California has not provided necessary assurances under CAA section 110(a)(2)(E)(i) that the State has adequate authority to implement the HD I/M Regulation consistent with Federal law. Commenters described California’s process for adopting the HD I/M Regulation, including the State Legislature’s enactment of legislation directing CARB to develop and implement an HD I/M program and public hearings and stakeholder meetings held during CARB’s development of the HD I/M Regulation. Commenters challenged the specific application of CAA section 110(a)(2)(E)(i) to the concerns identified in the proposed partial disapproval, arguing that the State rulemaking record includes sufficient analysis to support the State’s authority to lawfully implement the HD I/M Regulation. Commenters asserted that under CAA section 110 and associated case law, the EPA is generally required to approve SIP submittals that meet CAA requirements, including requirements related to providing necessary assurances, and argued that CAA section 110(a)(2)(E) in particular assigns the EPA a limited role in determining whether a State has provided necessary assurances. Commenters argued that this provision would not authorize the Agency to decide novel legal issues or resolve speculative legal challenges, to disapprove SIP submittals based on policy preferences, or to require States to provide assurances that a submittal is not prohibited by State law in other States or international law.

SCAQMD suggested that the EPA should allow the State an opportunity to provide necessary assurances, arguing that any failure by the State to submit a full legal argument does not mean that it lacks sufficient justification for its position that the HD I/M Regulation is lawful. The commenter asserted that the EPA is not required to make its own determination that necessary assurances have been provided when there is no reason that any would be necessary. The commenter cited EPA statements in guidance suggesting that it is unusual for States to have to make additional submittals related to authority once the EPA has approved the State’s infrastructure SIP and noted that the EPA previously approved assurances of authority included in the State’s infrastructure SIP for the 2015 ozone standards.

CAELP noted that CAA section 182 requires some SIPs to include I/M programs, which it describes as “plainly valid plan components” under the CAA. The commenter distinguished Ninth Circuit case law finding the EPA has discretion to determine the amount of evidence necessary to provide “‘necessary assurances’” under CAA section 110(a)(2)(E)(i), noting that in that case the EPA had previously found a *prima facie* violation of civil rights requirements well in advance of the State’s submission.

CARB pointed to specific portions of the Initial Statement of Reasons (ISOR) and Final Statement of Reasons (FSOR) included in its SIP submittal that it says provide the necessary assurances required under CAA section 110(a)(2)(E)(i), and noted that the State Office of Administrative Law’s approval of the HD I/M Regulation included a separate review to ensure consistency with State and Federal law. The commenter argued that the legislative history of the 1990 amendments to CAA section 110(a)(2)(E)(i) shows that Congress ratified early interpretations of the provision by the EPA and reviewing courts that suggest a more modest demonstration that would not require States to analyze potential legal challenges. The commenter asserted that the EPA was changing its position relative to previous actions in which the Agency provided that a State is not required to “demonstrate” that a SIP submittal is not prohibited by State or Federal law, but is instead is required only to provide “‘necessary assurances’” to that effect, and that a general assurance of certification is sufficient.

Commenters also cited cases to the effect that Constitutional claims fall “outside the [Agency’s] competence and expertise.”¹⁰² For example, SCAQMD states that “While there are some cases where Federal agencies decline to act on the grounds of unconstitutionality, these generally involve situations where the agency is deciding whether to implement its own statute, not where they declare a state or local law to be unconstitutional.”

Response: As explained above, the EPA has a statutory obligation under CAA section 110(a)(3)(E) to determine

¹⁰² Comment ID EPA–R09–OAR–2025–0061–0039 (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 (2010)). We note that the quoted excerpt is taken out of context. The Supreme Court was describing why, under the legal standard for determining whether claims must be presented to an agency in the first instance, the relevant statute did not deprive district courts of jurisdiction to consider constitutional challenges to the structure of the PCAOB (specifically, the two layers of removal protection for the Board’s members).

whether a State has provided “necessary assurances” that implementation of its SIP submission would not violate State or Federal law. Courts have recognizing that this language necessarily provides the Agency with discretion to determine what assurances are “necessary” relative to the legal issues presented. Approval of a SIP gives the submission the imprimatur of Federal law, and renders it federally enforceable. There can be no side-stepping of the task of evaluating whether a State has provided necessary assurances that its SIP will not conflict with Federal law.¹⁰³ It is misleading to state that EPA is declaring anything to be unconstitutional. Rather than adjudicating constitutional claims, as commenters assert, the EPA is acting pursuant to CAA requirements to deny a full approval based on substantial and valid concerns that the assurances provided are inadequate. There is a circularity of reasoning in the comments in which commenters focus on the State’s authority under State law to promulgate a regulation. Commenters then pivot to saying that this satisfies the Federal assurances requirement of the CAA. As stated above, “Commenters noted that under CAA section 110 and associated caselaw the EPA is generally required to approve SIP submittals that meet CAA requirements, including requirements related to providing necessary assurances.” But this statement clearly includes the requirement for necessary assurances. There is nothing novel about the EPA evaluating whether the proposed SIP violates the Federal Constitution. Unlike prior CARB regulations adopted by other States, the HD I/M Regulation submitted for review would apply to vehicles registered out-of-state and out-of-country that traverse within the State of California for virtually any minimal length of time or perhaps not at all. The costs may make it prohibitively expensive for certain trucking companies to operate in California, but even if companies do not intentionally operate there, but rather pass through, they would be impacted by the economic burden created nationwide by the regulation. “This is particularly burdensome for trucks registered out-of-state, which are considered non-compliant unless they test prior to

entering the state. These vehicles might operate in California for only a few hours or days, rather than for weeks or months, but must undergo testing to legally enter the state.”¹⁰⁴ And as some commenters have pointed out, the functional impact goes farther to reaching operators who never enter California at all. Comments from truckers and industry representatives reveal that the force of these regulations will be felt across the entire country. One commenter pointed out that “[b]y nature, trucks are mobile work units that routinely traverse local, state, and international borders. Under the HD I/M program, rented or leased trucks from outside California could potentially enter the state without the knowledge of the rental or leasing company since they are not in control of the vehicles’ routes.”¹⁰⁵

Thus, due to the risks of compliance costs and penalties, out-of-state truckers will be forced to treat California’s HD I/M Regulation as a national standard regardless of where they concentrate their business or if they even enter the State. We disagree with commenters’ assertions that the CAA’s “necessary assurances” requirement amounts to a box-checking exercise. The analysis presented in this preamble is novel only to the extent that CARB’s submission is unprecedented in scope. The State’s legislative and rulemaking record does not adequately address this concern, including the general review conducted by the State’s administrative law office. California appeared throughout to take an overly broad view of its authority and not to recognize the problem of its I/M requirements mandating behavior outside the State, particularly if the SIP submission were to be approved and therefore made federally enforceable. For similar reasons, we disagree that general assurances provided in

California’s infrastructure SIP some years ago have any relevance to this submission, particularly given the novel provisions at issue in this partial disapproval.

With respect to comments attempting to distinguish case law interpreting CAA section 110(a)(2)(E), including through legislative history, we disagree that this situation warrants a particularly relaxed approach to the “necessary assurances” requirement. Courts have recognized that CAA section 110(a)(2)(E) requires the EPA to evaluate assurances provided by the submitting State, if any, against the relevant legal standard and any factual submissions before the Agency.¹⁰⁶ Nor do we agree that legislative history that commenters assert “ratified” a more permissive approach prior to the 1990 amendments controls over the plain text of the statute, which courts have since construed as conferring discretion in case-by-case application.

With respect to commenters citation to CAA section 182, this provision undermines, rather than supports, commenters’ positions that California has broad authority to mandate I/M requirements, including for out-of-state and out-of-country vehicles, and that California provided necessary assurances that implementing that aspect of the SIP submission would comply with Federal law. As discussed previously, CAA section 110 requires “each State” to develop plans for implementing and maintaining the NAAQS “within” their State. CAA section 182 builds on this general SIP provision by providing for sequenced nonattainment classifications for particular States that fail to attain by the applicable deadline. These classifications—marginal, moderate, serious, severe, and extreme—are specific to each State and to each area within a State. States that immediately attain the NAAQS may never be designated nonattainment, and even States that fail to attain may never be designated at higher nonattainment levels. The structure of this provision demonstrates that the minimum I/M requirements imposed at particular nonattainment classifications are intended to be State-specific, as the mandatory I/M requirement for serious nonattainment areas, for example, are

¹⁰³ A violation of the Federal Constitution falls well within the bounds of that requirement, thereby obligating the EPA to assess whether the State has provided necessary assurances. As noted above, the EPA has previously applied this statutory requirement to assess whether the State provided “necessary assurances” that plan implementation would not violate the Civil Rights Act. See Comment ID EPA–R09–OAR–2025–0061–0043 (citing *El Comité para el Bienestar de Earlimart v. EPA*, 786 F.3d 688, 700 (9th Cir. 2015)).

¹⁰⁴ Comment ID EPA–R09–OAR–2025–0061–0039 (citing *In re Aiken Cnty.*, 725 F.3d 255, 259 (D.C. Cir. 2013)). The commenter cites to *Aiken County* with the parenthetical “describing authority,” but it is not clear why the commenter believes this citation supports its argument. In that case, the D.C. Circuit reasoned that agencies must abide by statutory requirements unless there are no congressional appropriations available or they have a constitutional objection to implementing the statute and could not simply decline to implement a licensing process. Here, we are acting pursuant to express statutory requirements by partially disapproving a SIP on the ground that the submitting State did not provide the “necessary assurances” required for an approval. It is worth noting the complete inapplicability of this case to this circumstance. In *Aiken* the agency in question refused to comply with a statutory mandate to issue a decision in a licensing process. The lack of any decision was the issue in that case, which has no comparison to this SIP decision.

¹⁰⁵ Comment ID EPA–R09–OAR–2025–0061–0036.

¹⁰⁶ See, e.g., *El Comité para el Bienestar*, 786 F.3d at 700–01 (stating that the EPA “has a duty to provide a reasoned judgment as to whether the state has provided ‘necessary assurances’” and holding that the Agency reasonably exercised its “discretion” in evaluating comment submissions to determine whether there was “any connection between the proposed rules and a potential disparate impact” in the civil rights context).

triggered only when an area is classified as serious nonattainment and are not required for areas classified attainment or a lower form of nonattainment.¹⁰⁷ By effectively imposing the HD I/M Regulation on owners and operators based in and servicing areas around the country regardless of classification, California's SIP submission disrupts the detailed scheme Congress enacted to incentivize attainment through area-specific measures that increase in stringency in the face of prolonged nonattainment.

Finally, one comment asserted that EPA has changed its position regarding the "necessary assurances" requirement for SIP submissions without an adequate explanation.¹⁰⁸ That is inaccurate. As noted at proposal, this situation presents a novel question on which the EPA has never had to develop a formal position. The Agency proposed a view in response to California's SIP submission and sought public comment. With respect to CAA section 110(a)(2)(E) more generally, the EPA previously asserted that it cannot approve a SIP when the State has not provided necessary assurances that the SIP could be implemented consistent with Federal and State law.¹⁰⁹

The commenter cited *BCCA Appeal Group*, which discussed the EPA's evaluation of a State's legal authority under State law to carry out a SIP. There, the court rejected a petitioner's argument that the EPA should have conducted an "extremely burdensome" evaluation of State law when it had no reason to doubt the assurances provided by the State.¹¹⁰ Here, in contrast, the EPA is determining that California failed to provide necessary assurances that implementing the out-of-state elements of the HD I/M Regulation is consistent with Federal law, namely, the Commerce Clause and the CAA. The commenter also cites to the Fifth Circuit's statement in *BCAA Appeal Group*, referring to a prior EPA SIP action, that "EPA is entitled to rely on a state's certification."¹¹¹ But the EPA made clear in prior actions that "Congress has left to the Administrator's

sound discretion determination of what assurances are 'necessary' under CAA section 110(a)(2)(E)(i)."¹¹² On the contrary, as other commenters noted, the "EPA has a duty to provide a reasoned judgment as to whether the state has provided 'necessary assurances,' but what assurances are 'necessary' is left to the EPA's discretion."¹¹³ Just as it may be reasonable under particular circumstances to rely on a State's assurances, particularly in a construction of applicable State law, so also is it reasonable in the circumstances presented here to conclude that a State has not provided necessary assurances, particularly in construing Federal law in the context of a novel and substantial assertion of State authority.

Although the EPA has not changed its position on this question, under *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), an agency may change its position by providing a reasoned explanation for the change that acknowledges the shift and accounts for legitimate reliance interests. Multiple circuits have held that the phrase "necessary assurances" in CAA section 110 is a broad term which provides the Agency significant discretion in evaluating what is necessary in each instance.¹¹⁴ These cases were not based on deference to the Agency's statutory interpretation. Rather, consistent with the Supreme Court's decision in *Loper Bright*, the statutory language itself confers authority to exercise reasoned judgment.¹¹⁵ Given the technical and case-specific nature of the SIP development and review process, the best reading of the phrase "necessary assurances" confers flexibility to the EPA in evaluating what assurances are required. Contrary to assertions made by one commenter, a "general assurance or certification" which reduces the Federal role to a mere rubber stamp would not be acceptable for fulfilling the EPA's statutory obligation to ensure that implementation of a SIP would not violate Federal law. Commenters did not present concrete reliance interests that were not considered during this rulemaking and could warrant a different outcome. To the extent commenters construe purported benefits

associated with a full approval of the HD I/M Regulation, however, we cannot agree that any such reliance is reasonable or legitimate. As noted previously, the out-of-state aspects of the HD I/M Regulation are novel, and the interests of California and commenters supporting California's position in demonstrating additional creditable emissions reductions for NAAQS attainment purposes are not sufficient to conclude that the State provided "necessary assurances" that implementing the SIP would not violate Federal law.

Finally, the EPA notes that its actions are constrained by Federal law separate and apart from the requirements of CAA section 110. It is axiomatic that Federal agencies may not take actions that violate the Constitution.¹¹⁶ Under the circumstances here, approving the SIP submission in full would give the imprimatur of Federal law (and make federally enforceable) a regulatory scheme that appears inconsistent with the allocation of authority set out in the Commerce Clause. Furthermore, the SIP submission's out-of-state applicability is inconsistent with CAA section 110, which charges "each State" to develop requirements for "such State" to achieve compliance with the NAAQS and, as discussed above, is consistent more broadly with the Act's division of Federal and State authority. This risks undermining regulatory consistency nationwide, and risks upsetting the entire NAAQS structure whereby each State plans and regulates as appropriate to comply with the requirements of the CAA.

Comment 14: No Conflict With Other SIPs

Several commenters challenged the EPA's proposed basis for partial disapproval related to substantial concerns that approving the extraterritorial reach of the HD I/M Regulation could interfere with attainment and reasonable further progress (RFP) in other areas and with implementation of approved SIPs for other States. Commenters noted that the EPA had not identified any specific conflicting requirements in other States and argued that any such conflict is unlikely since vehicles subject to multiple State requirements could comply with the more stringent requirements.

UCS argued that the EPA's concerns about conflicts between the HD I/M Regulation and other State SIPs is based on "flawed logic," because the HD I/M

¹⁰⁷ See CAA section 182(c)(3).

¹⁰⁸ Comment ID EPA-R09-OAR-2025-0061-0045.

¹⁰⁹ See 87 FR 60494, 60529 (October 5, 2022) ("EPA [has] ample discretion in deciding what assurances are 'necessary'") (citing *BCAA Appeal Grp.*, 355 F.3d at 830 n.11); *id.* at 60529 n.276 (citing *El Comité para el Bienestar*, 786 F.3d at 701).

¹¹⁰ 355 F.3d at 830 n.11; see also *id.* at 845 (collecting authorities holding that the EPA has discretion to determine what assurances are "necessary").

¹¹¹ Comment ID EPA-OAR-R09-2025-0061-0045 (citing *BCAA Appeal Grp.*, 355 F.3d at 830 n.11); see also 87 FR 61249, 61257 (October 11, 2022)).

¹¹² 87 FR 61249, 61259 n.85 (quoting *NRDC*, 478 F.2d at 884, and citing *BCCA Appeal Grp.*, 355 F.3d at 844-47).

¹¹³ Comment ID EPA-R09-OAR-2025-0061-0043 (quoting *El Comité para el Bienestar*, 786 F.3d at 701 (citing *NRDC*, 478 F.2d at 890-91)).

¹¹⁴ *El Comité para el Bienestar*, 786 F.3d at 701 (citing *NRDC*, 478 F.2d at 890-91); *BCCA Appeal Grp.*, 355 F.3d at 830 n.11.

¹¹⁵ 603 U.S. at 395.

¹¹⁶ See, e.g., *Aiken Cnty.*, 725 F.3d at 259 (summarizing relevant constitutional principles).

Regulation does not require any action to occur in other States, because the HD I/M Regulation applies only to vehicles that operate in California and enforcement would occur only within California, and because the HD I/M Regulation does not prevent out-of-state trucks subject to the HD I/M Regulation from complying with their home State's regulations. The commenter also highlights that it is a widespread practice for commercial vehicles to be domiciled and to commonly operate outside their State of registration, and suggests that it would be unreasonable for an out-of-state operator of vehicles in California to conduct its business without regard for California public health issues and regulations. The commenter suggested that as an alternative to partial disapproval, the EPA should facilitate a shared agreement among California and other States to allow vehicles to qualify as compliant if they have previously been tested under more stringent emissions inspection standards in another State.

CARB argued that the EPA's concerns about potential conflicts with laws in other States are too vague and speculative to justify partial disapproval, because the Agency has not identified any specific State programs that would conflict with the HD I/M Regulation. The commenter cited a Ninth Circuit decision upholding a Utah vehicle maintenance program that applied to some vehicles registered in other States as allowing non-uniformity of State in-use vehicle rules.

Some commenters provided details about other State HD I/M programs. CCAEJ pointed to statements in the proposed rulemaking noting that no other States implement HD I/M provisions as part of their SIPs. UCS cited information indicating that as of 2024, 17 States maintained some form of statewide or regional inspection requirements for heavy-duty vehicles.

Response: As explained in the response to Comment 8 and elsewhere in this preamble, commenters' claim that implementation of the HD I/M Regulation would not interfere with or contravene any other States' SIPs is contradicted by the concerns expressed and by the nature of the trucking industry and the burden that the HD I/M Regulation would place upon out-of-state-registered vehicles and fleets. Particularly if made federally enforceable, any person could attempt to bring an action alleging that a vehicle passed through California without first complying with the HD I/M Regulation, no matter where that vehicle is registered, receives maintenance, and generally operates. Owners and

operators would be forced to comply with California's HD I/M Regulation even if their State of registration imposes different I/M requirements. And other States would face limited options when seeking to use their own I/M programs to obtain creditable emissions reductions as part of SIPs submitted pursuant to CAA section 110. Thus, due to compliance costs and the risk of substantial penalties, out-of-state truckers will be forced to treat California's HD I/M Regulation as a national standard regardless of where they concentrate their business, and the nationwide reach of California's HD I/M Regulation could restrict the ability of other States to fulfill their statutory obligation to provide for a plan to maintain the NAAQS "within" their State.

Also, as explained elsewhere in this preamble, California's SIP submission seeks to remedy local nonattainment by extending the State's regulatory reach to vehicles registered in other States, and even other countries, that happen to traverse the State. This result is not contemplated or authorized by CAA section 110, which requires "each State" to implement the NAAQS "within such State," and does not fall within any of the exceptional provisions of the Act that contemplate one State reaching into another State in pursuit of air quality improvements within its own borders. This is not a lawful use of the CAA's SIP provisions, which instruct each State to adopt appropriate controls for that State and prohibit the approval of SIPs not supported by "necessary assurances" of legality under Federal and State law. California may adopt and seek approval of a broad range of strategies to promote NAAQS attainment within the State, including by adopting additional measures for vehicles registered within the State. But it cannot (at minimum, without providing necessary assurances) outsource the costs of local attainment to out-of-state and out-of-country vehicle owners and operators through a regulation that would, if approved, become federally enforceable throughout the country in lieu of adopting additional controls for vehicles registered within the State. Some States have HD I/M provisions that differ from California's in material respects, but none of these have been approved into SIPs.¹¹⁷ If approved into the SIP in all

respects, California's HD I/M Regulation would be federally enforceable to the same extent as other State I/M regulations, including any that may be approved by the EPA in the future pursuant to CAA section 110. The result would be multiple conflicting sources of obligations that are enforceable both within the respective States and federally under the CAA.

Comment 15: Partial Disapproval Is Otherwise Arbitrary and Capricious

Several commenters argued that the EPA's proposed partial disapproval is arbitrary and capricious or otherwise not in accordance with law, for reasons addressed in other comments and based on additional claimed deficiencies, including that the proposal fails to consider relevant legal and factual issues, fails to include sufficient analysis or support, and is based on incorrect assumptions.

Among other claims, commenters asserted that the proposal includes an insufficient legal and factual basis to establish violations of the Commerce Clause or other constitutional provisions, fails to consider benefits associated with the HD I/M Regulation either separately or in balance with costs, and fails to acknowledge or explain the EPA's purported change in policy regarding the nature of necessary assurances that a State must provide (including in the context of the Dormant Commerce Clause). Some commenters suggested that the EPA had not provided a "reasoned judgment" to support the proposed partial disapproval. Certain commenters also suggested that the proposed disapproval is pretextual because it is based on considerations other than those described in the proposal, including considerations not authorized by the CAA. These commenters pointed to language in an EPA press release announcing the proposal, which described the HD I/M Regulation as related to climate ideology rather than reduction of criteria pollutants, noting that the HD I/M Regulation is not aimed at reducing greenhouse gases and is not included in the State's plans related to climate change. CARB stated that this language suggests the EPA is acting out of unrelated hostility to California over its other regulatory efforts.

Response: The EPA disagrees that partial disapproval of the HD I/M

¹¹⁷ See 6 NYCRR subpart 217–5 (New York Heavy Duty Inspection and Maintenance Program); N.J.A.C. 7:27–14 (New Jersey Control and Prohibition of Air Pollution); ORS 815.200–215 (Oregon motor vehicle pollution control); see also Comment ID EPA–OAR–2025–0061–0047 ("Existing HD I/M programs, or new programs

adopted in the future, may not all have identical requirements, but any discrepancies are likely to have an immeasurable impact on air quality outcomes provided they are target high-emitting vehicles. Greater assurances are needed that the emissions benefits from these separate programs are properly accounted for and do not overlap.").

Regulation is inappropriate for the reasons suggested by commenters.¹¹⁸ To the extent commenters have suggested that additional discussion is needed to support the proposed rulemaking, we note additional analysis included in this document, which describes the basis for our final action, including in response to issues raised by commenters. In compliance with all statutory and administrative requirements, the EPA provided notice in the **Federal Register** and an opportunity for public comment on a proposed rulemaking seeking either to partially approve and partially disapprove or to fully approve this SIP revision. That opportunity for public input generated a robust response, and we disagree with commenters to the extent they assert that the opportunity for public input during this rulemaking was insufficient.

The EPA proposed partial approval and partial disapproval based upon California's failure to provide the "necessary assurances" that its SIP submission could be implemented consistent with Federal law. The EPA also asked for comment related to the concern that the HD I/M Regulation could also interfere with other applicable requirements of the Act concerning attainment and RFP, as well as the implementation of SIPs submitted by other States and approved by the EPA.

Many comments favoring partial disapproval were received from farmers, independent truckers, small trucking businesses, and national trucking organizations. These groups posited that the HD I/M Regulation violates the Commerce Clause by imposing serious burdens upon interstate commerce. Through the intake and review of comments submitted, the EPA was informed by myriad concerned parties that while owners of heavy-duty vehicles registered in and operating in California must register with CARB, submit reports on the functionality of their emissions control systems to CARB by way of CARB-certified inspectors,

and obtain a compliance certificate to be presented during CARB-led inspections, the HD I/M Regulation also applies to all non-gasoline combustion vehicles above 14,000 lbs that pass through California. Unlike prior CARB regulations and similar regulations adopted by other States, the HD I/M Regulation submitted for review would apply to vehicles registered out-of-state and out-of-country that traverse the State of California for virtually any length of time. It has been the consistent policy of the EPA to evaluate the necessary assurances provided by the State for compliance with CAA section 110. As admitted by multiple commenters and in case law, the "EPA has a duty to provide a reasoned judgment as to whether the state has provided 'necessary assurances.'" ¹¹⁹ A submission cannot be approved without such assurances, and the EPA cannot simply sidestep such Federal constitutional issues based on assertions that California has or should have broad authority to regulate nationwide in pursuit of purported benefits. The EPA has both the discretion and a statutory obligation to review such a submission, weighing the necessary assurances provided, if any, alongside relevant information and the applicable legal standard—here, including a review of the purposes of the regulation, its projected costs and purported benefits, and case law bearing on the proper interpretation of relevant CAA provisions and the Commerce Clause. Based on diligent review of the comments, legal issues, and information associated with the proposed SIP, the EPA made a reasonable decision and reasonably explained that decision as required by the Clean Air Act and relevant sources of administrative law, including the Administrative Procedure Act.

C. Other Comments

Comment 16: General Objections to HD I/M Regulation and Other CARB Actions

Numerous commenters expressed general disapproval of the HD I/M Regulation and other CARB regulations. Many of these commenters highlighted concerns about the costs and other burdens associated with compliance with CARB's motor vehicle regulations, with some questioning whether HD I/M Regulations were cost-efficient generally, effective for reducing air pollution, or otherwise necessary. Several commenters described experiences as members of the regulated

community, including personal hardships they have faced or anticipate facing as a result of CARB regulations. Some criticized CARB initiatives related to climate change.

Response: We understand many of these comments to be generally supportive of the EPA's proposed partial disapproval, including those objecting to the HD I/M Regulation's application to out-of-state and out-of-country vehicles. For further treatment of comments in support of the partial disapproval alternative, please see our responses to Comments 1 through 4. Comments related to other CARB regulations, including other regulations applicable to heavy-duty diesel vehicles and measures to address climate change, are outside the scope of this action. As noted in our response to Comment 17, comments regarding specific design and function of the HD I/M Regulation are also outside the scope of this action. However, we note that the partial disapproval finalized in this action does not reflect an analysis of CARB's regulations generally or the costs of the HD I/M Regulation solely with respect to vehicles registered within the State. Additional CARB regulations are out of scope for this final action, and we are approving the HD I/M Regulation to the extent applicable to vehicles registered within the State. Unless provided otherwise by the CAA, States generally have substantial discretion to develop and implement plans, subject to EPA review and approval, to attain and maintain the NAAQS.

Comment 17: Suggested Revisions to the HD I/M Regulation

Several commenters raised concerns regarding specific programmatic design elements of the HD I/M Regulation and other measures, including their application to vehicles registered outside of California, exemptions or flexibilities for specific classes of vehicles, and issues related to HD I/M Regulation's testing and reporting obligations and other enforcement mechanisms.

Response: These comments fall outside the scope of this final action. Although we are disapproving the HD I/M Regulation with respect to vehicles registered outside of California, the EPA cannot amend State rules that comply with CAA requirements through the SIP review process. As noted previously, States generally have substantial discretion to develop and implement plans, subject to EPA review and approval, to attain and maintain the NAAQS. Thus, we are approving the HD I/M Regulation to the extent it applies to vehicles registered within the State of

¹¹⁸ With respect to commenters' assertions of pretext based on an EPA press release, we disagree with the suggestion that this action was motivated by reasoning related to other CARB regulatory efforts addressing global climate change concerns. As explained at proposal and in this final rule, the EPA is disapproving the SIP submission in part because California failed to provide the required necessary assurances that implementation of the HD I/M Regulation would, if approved and made enforceable nationwide, be consistent with Federal law. Notably, we are approving the SIP submission in part to the extent it complies with the statute and does not raise the same problem with respect to necessary assurances and Federal law. Commenters are taking the press release out of context to avoid grappling with the rationale and basis for decision included in the proposed rule.

¹¹⁹ Comment ID EPA-R09-OAR-2025-0061-0043 (quoting *El Comité para el Bienestar*, 786 F.3d at 701, and citing *NRDC*, 478 F.2d at 890-91).

California as consistent with applicable requirements of the CAA.

Comment 18: General Support for HD I/M Programs

The Manufacturers of Emission Controls Association (MECA) expressed general support for HD I/M programs as a tool to ensure vehicles operate as designed throughout their useful lives, and particular support for California's HD I/M Regulation as an example for other States. The commenter cited the effectiveness of diesel oxidation catalysts, diesel particulate filters, and selective catalytic reduction emissions control technologies, and noted the importance of I/M requirements for sustaining the benefits of these technologies over a vehicle's lifetime. The commenter highlighted the role of I/M as a deterrent to known high-emission operations and tampering, as a mechanism for ensuring a level playing field across the trucking industry, and as a proactive monitoring tool to identify fleet maintenance needs.

Response: The EPA acknowledges the general benefits of regular I/M for vehicles and emission control, including the role of State regulatory programs applicable to in-state registered vehicles. For this reason, among others, we are approving the HD I/M Regulation as it applies to California-registered vehicles. See our response to Comment 6 for additional responses related to our consideration of general benefits of the HD I/M Regulation.

Comment 19: Requests for Additional Analysis

An anonymous commenter suggested that the EPA provide additional discussion and documentation on several topics. The commenter asked the EPA to provide more detailed criteria or examples regarding what constitutes acceptable State "assurances" under CAA section 110(a)(2)(E)(i). The commenter requested additional clarification regarding the effect of finalizing a partial disapproval, including issues relating to the timing for approved provisions to take effect, the impacts to California attainment planning efforts, and implications for future SIP flexibility. The commenter also asked the EPA to evaluate whether Federal programs could complement State efforts to prevent emissions leakage and to require California to provide reports related to compliance and enforcement and to recommend that the State incorporate environmental justice screening into its enforcement activities.

Response: Please see our responses to other comments and other portions of this preamble for additional discussion of CAA section 110(a)(2)(E)(i) and the effects of partial disapproval of the HD I/M Regulation. Our partial approval and partial disapproval will become effective 30 days from the date of publication of this final action in the **Federal Register**. We disagree with the commenter that other additional evaluation or documentation is necessary to support this action, but note that the Agency has provided guidance regarding SIP submissions in a number of respects and remains committed to working with States to assist in developing approvable submissions that meet the requirements and objectives of the CAA. With respect to the question whether Federal programs complement State efforts to prevent emissions leakage, we note that the EPA has adopted inspection and maintenance requirements in several contexts and issued guidance on I/M programs generally in response to the 1990 CAA Amendments. Finally, with respect to compliance and enforcement, our approval of the HD I/M Regulation to the extent it applies to in-state registered vehicles reflects a determination that California's SIP includes sufficient reporting, compliance, and enforcement mechanisms to satisfy applicable CAA requirements. The statute does not require, or authorize the EPA to require, environmental justice screening as part of that demonstration.

Comment 20: Partial Conditional Approval

One commenter suggested that the EPA should fully approve the HD I/M Regulation as it applies to out-of-state vehicles but conditionally approve the HD I/M Regulation as applied to in-state vehicles. The commenter suggested that the conditional approval for in-state vehicles should be conditional on the availability of alternative modes of transportation for California laborers, citing the need to protect the State's trucking industry from a decrease in trucking jobs that the commenter anticipates will result from implementation of the HD I/M Regulation. In support of approving the HD I/M Regulation for out-of-state vehicles, the commenter argues that these vehicles produce the most emissions in California and therefore must necessarily be regulated.

The commenter argued that there would be no Commerce Clause violation in approving the HD I/M Regulation for out-of-state vehicles because the benefits associated with the HD I/M

Regulation will outweigh the associated burdens. The commenter also suggests that the HD I/M Regulation should be adopted at the Federal level.

Response: We do not understand the CAA as authorizing the EPA to take the action suggested by the commenter. As an initial matter, we see no basis for us to condition approval of the HD I/M Regulation as to in-state vehicles on the availability of replacement employment for the California truckers the commenter believes may lose their jobs as a result of the HD I/M Regulation. While we appreciate this concern, the CAA does not require States to include measures that address such adverse economic impacts that may result from emissions control measures, and California has in its discretion decided to proceed with the HD I/M Regulation despite the potential for losses to in-state trucking jobs the commenter highlighted.

Conversely, however, we disagree that it would be appropriate to fully approve, on a non-conditional basis, the HD I/M Regulation to the extent it applies to out-of-state vehicles. Such an approval structure would raise additional Commerce Clause concerns (if coupled with the conditional approval discussed above) by providing protections for California truckers that are not extended to out-of-state truckers. As discussed above, the burdens imposed on out-of-state and out-of-country owners and operators, and interstate commerce generally, in exchange for localized benefits are relevant to the Commerce Clause analysis and to the propriety of California's SIP submission under the CAA.

Comment 21: Full Disapproval

A member of the California State Assembly suggested that the EPA should fully disapprove the submitted HD I/M Regulation. The commenter pointed to concerns identified in the proposed rulemaking related to CAA section 110(a)(2)(E)(i) and to the HD I/M Regulation's enforceability and constitutionality, and argued that disapproving it only for non-California vehicles would leave a materially different and unvetted program. The commenter also argued that the costs and vehicle downtime associated with the HD I/M Regulation confirms the need for a uniform Federal approach rather than a California-specific rule.

Response: We disagree that the substantial concerns identified for vehicles registered out-of-state would warrant disapproval of the HD I/M Regulation for the reasons suggested. Additional comments relating to

compliance costs are addressed in our response to Comments 1 and 2.

Comment 22: Partial Disapproval Only for Vehicles Merely Passing Through California

SCAQMD, while generally arguing in favor of full approval of the HD I/M Regulation, suggested that any disapproval should be limited to vehicles that merely pass through California, rather than vehicles that conduct business in California and make one or more stops within the State, arguing that this would address the EPA's most substantial concerns.

Response: We do not consider the commenter's suggestion to be a viable alternative to the EPA's proposed alternative actions for the reason that it would not be practically enforceable as described. Determining the applicability of the HD I/M Regulation to a particular vehicle on the basis of whether the vehicle merely passes through California or conducts business within the State would be difficult if not impossible in practice. The comment, rather, highlights the impermissible burdens the proposed SIP would place on out-of-state residents and commercial enterprises. These costs would make it prohibitively expensive for certain trucking companies to operate in California or even to pass through California routed to other destinations, thereby creating an economic burden felt throughout the United States. "This is particularly burdensome for trucks registered out-of-state, which are considered non-compliant unless they test prior to entering the state. These vehicles might operate in California for only a few hours or days, rather than for weeks or months, but must undergo testing to legally enter the state."¹²⁰

Small proprietors also argued they would be forced to treat the HD I/M Regulation as a national standard that mandates fleet replacement, creates out-of-state permitting hurdles, risks fines levied against non-California based businesses, and threatens downstream burdens to other industries in need of transportation services.¹²¹

IV. Incorporation by Reference

In this rule, 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 CARB's Heavy-Duty Vehicle Inspection and Maintenance Program, listed in table 1 of section I of this preamble: 13 CCR 2193 (amended); and new sections 13 CCR 2195, 2195.1, 2196, 2196.1, 2196.2, 2196.3, 2196.4, 2196.5, 2196.6, 2196.7, 2196.8, 2197, 2197.1, 2197.2, 2197.3, 2198, 2198.1, 2198.2, 2199, and 2199.1, and the OBD Standards incorporated by reference within the regulations. (As described in this action, our approval is limited to vehicles registered in the State of California.) These regulations control emissions from non-gasoline powered vehicles travelling in California and weighing over 14,000 pounds. 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). These materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of the EPA's partial approval, and will be incorporated by reference in the next update to the SIP compilation.¹²²

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 review State choices and approve those choices if they meet the requirements of the Act. Accordingly, this final action partially approves and partially disapproves a State regulation as meeting Federal requirements and does not impose additional requirements beyond those imposed by the State regulation.

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

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

This is a significant regulatory action as per Executive Order 12866 and was submitted to the Office of Management and Budget (OMB) for review.

¹²² 62 FR 27968 (May 22, 1997).

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not an Executive Order 14192 regulatory action. The SIP partial disapproval does not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion in the SIP. The SIP approval does not impose any requirements, but rather determines that the State's submission complies with the CAA and applicable regulations.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by State law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by State law. This rule grants partial approval for state air quality regulations. It does not in and of itself impose any additional requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by State law. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175, because 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, and will not impose substantial direct costs on Tribal governments or preempt Tribal law.

¹²⁰ Comment ID EPA–R09–OAR–2025–0061–0047.

¹²¹ See generally Comment ID EPA–R09–OAR–2025–0061–0015; Comment ID EPA–R09–OAR–2025–0061–0016; Comment ID EPA–R09–OAR–2025–0061–0018.

Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because it merely partially approves and partially disapproves State law as meeting Federal requirements. Furthermore, the EPA’s Policy on Children’s Health does not apply to this action.

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

This action 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. This action on an inspection and maintenance measure for heavy-duty vehicles in California does not relate to or affect energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements

of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 2026. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 27, 2026.

Michael Martucci, Acting Regional Administrator, EPA Region IX.

For the reasons stated in the preamble, the 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 F—California

■ 2. In § 52.220a, in paragraph (c), table 1 is amended by:

■ a. Revising the entry for “2193”, under the subheading “Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.6. (Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles)”; and

■ b. Adding a heading for “Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.7 (Heavy Duty Motor Vehicle Inspection and Maintenance Program)” immediately after the entry for “2194”; and adding entries for “2195”, “2195.1”, “2196”, “2196.1”, “2196.2”, “2196.3”, “2196.4”, “2196.5”, “2196.6”, “2196.7”, “2196.8”, “2197”, “2197.1”, “2197.2”, “2197.3”, “2198”, “2198.1”, “2198.2”, “2199”, “2199.1”, and “Final Regulation Order, Attachment B” under the newly added heading.

The revision and additions read as follows:

§ 52.220a Identification of plan-in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS ¹

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.6. (Periodic Smoke Inspections of Heavy-Duty Diesel-Powered Vehicles)				
2193	Smoke Opacity Standards, Inspection Intervals, and Test Procedures.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Replaces version effective July 1, 2019 with amended version effective January 1, 2023, as it applies to vehicles registered in the State of California.
*	*	*	*	*
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 3.7 (Heavy-Duty Vehicle Inspection and Maintenance Program)				
2195	Applicability	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves §2195 of California’s Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2195.1	Definitions	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2195.1 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196	Owner and Operator Requirements	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.1	HD I/M Compliance and Registration.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.1 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.2	Periodic Vehicle Emission Testing Requirements.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.2 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.3	Vehicle Compliance Test Methods for OBD-Equipped Vehicles.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.3 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.4	Vehicle Compliance Test Method for Non-OBD-Equipped Vehicles.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.4 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.5	Roadside Emissions Monitoring Devices.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.5 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.6	Smoke Opacity Standards	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.6 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.7	Referee Services	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.7 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2196.8	Parts Unavailability Compliance Time Extension.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2196.8 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2197	Freight Contractor, Broker, and Applicable Freight Facility Requirements.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2197 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2197.1	HD I/M Tester Requirements	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2197.1 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2197.2	Reporting Requirements	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2197.2 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2197.3	Recordkeeping Requirements	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2197.3 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2198	Vehicle Emissions Control Equipment Inspections.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2198 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2198.1	In-person Field Inspection Requirements for Drivers and Inspectors.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2198.1 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2198.2	Enforcement	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2198.2 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2199	Severability of Provisions	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2199 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.
2199.1	Sunset of the Requirements of the Heavy-Duty Vehicle Inspection Program and the Periodic Smoke Inspection Program.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves § 2199.1 of California's Heavy-Duty Inspection and Maintenance Program as it applies to vehicles registered in the State of California.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Final Regulation Order, Attachment B.	California Standards for Heavy-Duty Remote On-Board Diagnostic Devices.	1/1/2023	2/6/2026 91 FR [INSERT FEDERAL REGISTER PAGE WHERE THE DOCUMENT BEGINS].	Approves California Standards for Heavy-Duty Remote On-Board Diagnostic Devices as it applies to vehicles registered in the State of California.
*	*	*	*	*

¹ Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

* * * * *

■ 3. Add § 52.249 to subpart F to read as follows:

§ 52.249 California Heavy-Duty inspection and maintenance program.

Approval of the California Heavy-Duty Vehicle Inspection and Maintenance Program, as approved on

February 6, 2026 in table 1 of § 52.220a(c), is limited to vehicles registered in the State of California.

[FR Doc. 2026-02350 Filed 2-5-26; 8:45 am]

BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 91, No. 25

Friday, February 6, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN 3206–AO97

Suitability Action Appeals

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing amendments to the review process for suitability actions. The purpose of the proposed rule is to streamline suitability action appeals procedures, thereby improving the efficiency, rigor and timeliness by which OPM and agencies resolve challenges to suitability actions and ensure the integrity and efficiency of the service.

DATES: Comments must be received on or before March 9, 2026.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received must include the agency name and docket number or Regulation Identifier Number (RIN).

Where possible, please arrange and identify your comments on the regulatory text by subpart and section number; if your comments relate to the supplementary information, please refer to the heading and page number. Comments received after the close of the comment period will be marked “late,” and OPM is not required to consider them in formulating a final decision. If you cannot submit comments electronically, please contact the individual listed in the further information section.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> without change, including any personal identifiers or contact information.

As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For questions, contact Mr. Joe Knouff, Suitability Executive Agent Programs, by email at SuitEA@opm.gov or by phone at (202) 599–0090.

SUPPLEMENTARY INFORMATION:

Authority and Background

Congress has long granted the President authority to ensure that those employed in the competitive service¹ or career appointments to the Senior Executive Service (SES) are suitable for Federal employment. When OPM or an agency with delegated authority determines an individual is not suitable for employment in the competitive service or career SES, OPM or the agency takes a suitability action to protect the integrity or promote the efficiency of the service. The suitability standards and procedures are implemented under the authority of 5 U.S.C. 3301, 3302, and 7301. Historically, the President delegated to OPM and its predecessor, the Civil Service Commission, the authority to prescribe both qualification standards and suitability standards, and to conduct both examinations of applicants' qualifications and investigations of their suitability for appointment and continuing employment. See 5 U.S.C. 1104(a)(1). These standards and procedures are implemented through OPM's regulations at Title 5, Code of Federal Regulations part 731 (5 CFR part 731), which include procedures governing suitability actions and the general process for appealing a suitability action.

Suitability standards and procedures play a key role in protecting the Federal government against potential risks posed by those entrusted to work for it. Every day, America's adversaries seek to undermine the effective performance of government functions and the confidentiality of sensitive government information. Employees who are

untrustworthy or unvetted pose a threat to the effective performance of agency missions, workplace safety, and data security. Successive presidential administrations spanning almost 20 years have emphasized the importance of enhanced risk management of the Federal government's trusted workforce through efforts at modernizing processes to ensure only trusted individuals enter and remain in the Federal workforce. In May 2018, the OPM Director and the Director of National Intelligence, in their respective roles as Suitability and Credentialing Executive Agent and Security Executive Agent, launched the Trusted Workforce 2.0 initiative, a key goal of which is to provide vetting processes that enable the government to continuously vet the Federal workforce to ensure they remain suitable or fit for service over time. The Trusted Workforce 2.0 initiative recognizes that as the technologies and tactics used by America's adversaries evolve, so must the government's approach to ensuring its workforce remains trusted. Modernizing suitability procedures that allow the government to quickly resolve any risks discovered in the Federal workforce is crucial to supporting this long-standing goal to better protect the Federal government's critical missions.

Suitability and fitness determinations examine “character or conduct that may have an adverse impact on the integrity or efficiency of the service,” such as criminal or dishonest conduct, and deception or fraud in examination or appointment. 5 CFR 731.101, 731.201, 731.202. The objective of the suitability and fitness adjudicator is to establish a reasonable expectation that employment or continued employment of an individual either would or would not protect the integrity or promote the efficiency of the service. 5 CFR 731.201. When there is evidence that the individual's employment would not protect the integrity or promote the efficiency of the service, the individual may be found unsuitable or unfit. If the suitability determination is unfavorable, the adjudicator must then determine what “suitability action” is appropriate. See § 731.203(a). OPM's regulations define a “suitability action” to include “[c]ancellation of eligibility,” “[r]emoval,” “[c]ancellation of reinstatement eligibility,” and “[d]ebarment.” See § 731.101(a).

¹ For the purposes of the Suitability and Fitness regulation at 5 CFR part 731, “competitive service or career SES refers to a position in the competitive service, a position in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and a career appointment to a position in the SES. See 5 CFR 731.101(a).

This rule proposes to return the venue to hear suitability action appeals from the Merit System Protection Board (MSPB) to OPM, thereby honoring congressional intent and streamlining the suitability action and appeals process in a manner that results in savings to agency operational costs and the American public, while also providing due process and more expeditiously arriving at resolutions that protect the integrity and promote the efficiency of the service. OPM is proposing to no longer permit individuals in any status, whether an applicant, appointee, or employee, as those terms are defined in 5 CFR 731.101(a), to appeal suitability actions to the MSPB. At the same time, OPM proposes to introduce new procedures by which an individual may appeal a suitability action to OPM.

OPM recently proposed separate changes to subparts A, B, C, and D of 5 CFR part 731. See 90 FR 23467 (June 3, 2025). The proposed changes in this present rulemaking are limited to subpart E of this part and are separate and distinct from the changes proposed in the June 2025 Suitability and Fitness Notice of Proposed Rulemaking (June NPRM) at 90 FR 23467. The June NPRM addresses updates to the specific factors used to evaluate an individual's suitability or fitness for Federal service, as directed by E.O. 14210 of February 11, 2025, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative*, (see 90 FR 9669, Feb. 14, 2025) and OPM's and agencies' delegated authority to take suitability actions based on post-appointment conduct as directed by Presidential Memorandum on March 20, 2025, *Strengthening the Suitability and Fitness of the Federal Workforce*, (see 90 FR 13683, Mar. 25, 2025). This present rule is limited to appeals of suitability actions. The appeal processes proposed in this rule would operate independently of the changes proposed in the June NPRM and could serve in an appeal of a suitability action irrespective of how OPM ultimately completes the June NPRM.

In proposing to discontinue MSPB appeals for suitability actions, OPM has considered that judicial and legislative history demonstrates clear congressional intent to exclude suitability actions from standard civil service Chapter 75 procedures—including MSPB appeals. In the early 2010s, two decisions involving individuals in the competitive service limited agencies' ability to mitigate risk through suitability actions by forcing actions based on post-appointment conduct to proceed through Chapter 75 procedures. First, in

2011 the MSPB decided in *Scott v. OPM* (116 M.S.P.R. 356 (2011), modified by 117 M.S.P.R. 467 (2012)) that suitability actions could not be taken for post-appointment conduct. Then, in 2015, the Federal Circuit held in *Archuleta v. Hopper* (786 F.3d 1340 (Fed. Cir. 2015)) suitability-based removals were subject to Chapter 75 adverse action procedures. Congress almost immediately repudiated this interpretation of Chapter 75 by the courts and clarified that suitability authority is separate and distinct from Chapter 75 removal authority. Specifically, in 2015, Congress added 5 U.S.C. 7512(F) to clarify that "a suitability action taken by the Office under regulations prescribed by the Office, subject to the rules prescribed by the President under this title for the administration of the competitive service"² is not within the scope of Chapter 75 (and thus statutory MSPB jurisdiction). This clarifying addition was part of a larger package of reforms in the Fiscal Year 2015 National Defense Authorization Act (FY 2015 NDAA) designed to improve the speed and effectiveness of government personnel security, suitability, and credentialing reviews. These reforms were heavily influenced by Congress' response to tragic, potentially avoidable events had the government had more robust personnel vetting processes. Following the Washington Navy Yard shooting in September 2013, which saw 12 individuals lose their lives, Congress held hearings examining necessary improvements to vetting processes highlighted by this event and other high-profile leaks of information (e.g., Wikileaks), and crafted legislation to improve the government's ability to protect against risk posed by trusted insiders. For example, the same section of the FY 2015 NDAA that added language to clarify that suitability actions were not within the scope of Chapter 75 also directed action to develop strategies and capabilities to enable real-time, risk managed personnel vetting decisions, increase access to criminal history information when determining an individual's suitability or fitness for employment, and improve insider threat detection and prevention. In passing this amendment, Congress improved the Government's ability to mitigate risk by rectifying a situation created by the courts, which had subjected suitability actions to the process dictated by Chapter 75. The FY 2015 NDAA

returned the ability for suitability actions to follow a more streamlined process than Chapter 75.

MSPB has nonetheless continued to exercise jurisdiction over suitability appeals, as OPM's regulations in 5 CFR part 731, subpart E, authorize MSPB appeals of suitability actions. These regulations pre-date the FY 2015 NDAA amendments clarifying that suitability actions are not subject to Chapter 75 requirements. Under 5 U.S.C. 1204(a) the MSPB can adjudicate matters that are placed within its jurisdiction by any law, rule, or regulation. So, while the law does not require that MSPB hear appeals of suitability actions, OPM regulations continue to do so.

Removing MSPB appeals of suitability actions from OPM's regulations would remove the MSPB's jurisdiction to hear such appeals. Individuals against whom suitability actions are proposed will continue to be able to rely on the procedural protections OPM provides in its suitability regulations at 5 CFR part 731, subparts C and D. When OPM or an agency makes an unfavorable suitability determination and takes a suitability action, individuals would have further protections in the form of an appeal to OPM provided in the proposed revisions to subpart E, described below. Accordingly, suitability actions that remove an appointee or employee will not constitute at-will dismissal.

OPM has also considered that MSPB procedures add considerable complexity and delay arriving at a final resolution for both appellants and agencies. When appealing to the MSPB, employees have a statutory right to a hearing when the matter is within its jurisdiction.³ And before reaching a hearing, MSPB regulations allow the parties to engage in discovery.⁴ On top of these procedures, the MSPB process includes multiple levels of appeal. An employee or applicant can appeal an administrative judge's initial ruling to the full MSPB, and then to the U.S. Court of Appeals for the Federal Circuit. See 5 CFR part 1201. This process of successive, duplicative appeals can take years, wasting valuable time and resources.

OPM believes that removing suitability appeals from MSPB will result in faster resolution for individuals and agencies. In MSPB's Annual Performance Reports for Fiscal Years (FY) 2022 through 2024,⁵ the average

³ 5 U.S.C. 7701(a).

⁴ 5 CFR 1201.71–1201.75.

⁵ National Defense Authorization Act (NDAA) for Fiscal Year 2016, Public Law 11492, div. A, title X, § 1086(f)(9), Nov. 25, 2015, 129 Stat. 1010.

⁵ MSPB's Annual Reports can be found on MSPB's website at https://www.mspb.gov/about/annualreport_archive.htm.

case processing time for initial appeals alone is 109 days. This does not include situations where additional time is needed for a decision by the Board is required to provide resolution, discussed below. It should also be noted that during this time period when MSPB averaged 109 days to process initial appeals, 69% of all appeals filed were dismissed, and of those remaining appeals not dismissed, 57% ended in settlement. During this same period, the MSPB decided an average of 4,186 cases per year, where suitability appeals represented an average of only 1.2% of all cases. Although only a small fraction of the total cases, suitability appeals are blended with the overall workload of the MSPB, which subjects these appeals to the same processing timelines as all other case types. By removing suitability appeals from MSPB, these suitability appeals would reach resolution more quickly because OPM's suitability office would have no other types of appeals to process and compete for attention.

OPM has also considered the negative impact MSPB's recent history of a lack of quorum has on providing individuals and agencies with prompt resolution of appeals. Between January 7, 2017, and March 3, 2022, and for the better part of 2025, MSPB lacked a quorum, which prevented it from reviewing cases and resulted in a considerable backlog.⁶ During the 2017 to 2022 period when MSPB lacked a quorum, OPM had 14 appeals of its suitability actions impacted, where the individuals and agencies involved in the actions waited an average of 5 years and 7 months between the time OPM took its suitability action and the date the Board rendered a decision. This situation leaves individuals and agencies in limbo for far too long. MSPB itself cannot rectify this recurring problem, as the cause of the lack of a quorum stems from the Senate's failure to confirm nominees to the MSPB in a timely manner. The executive branch lacks any meaningful control over this process, and therefore prudent governance requires the executive to minimize disruption to personnel operations caused by loss of a quorum at MSPB. Moving appeals of suitability actions from MSPB to OPM will ensure the executive branch retains control and flexibility to allocate resources to avoid extensive delays or backlogs that would deprive individuals and agencies of timely resolution. It also leverages

OPM's expertise in promulgating and interpreting suitability regulations as well as its expertise in adjudicating suitability matters. Housing suitability action appeals within the agency with historical expertise in suitability matters will promote consistency, efficiency, and regularity of decision-making regarding suitability action appeals. While individuals may lack some procedural mechanisms if appeals are transferred to OPM as proposed in this rule, OPM believes streamlining the process will not have a consequential impact upon the substantive outcomes of the appeals, while improving the efficiency and consistency of the process.

In proposing to remove competitive service and career SES suitability appeals from MSPB, OPM also considered that it is possible that the complexity, time, and cost of defending suitability actions at MSPB coupled with the high rate of settlements that result from such appeals may discourage agencies from pursuing suitability actions to mitigate risk when an action is warranted. From FY 2018 through 2024,⁷ 71% of MSPB appeals of suitability actions that were not initially dismissed resulted in a settlement. In the context of a suitability appeal, all settlements result in a reduction of penalties and almost always involve reducing the period of debarment. The high rate of settlements has at least two potential consequences. First, the debarment period set in a suitability action serves the purpose of both protecting the integrity and efficiency of the service and affording a sufficient period for the debarred individual to demonstrate rehabilitation. Shortening this period exposes the government to increased risk and also allows individuals to re-enter Federal service before sufficient time has passed to allow for them to demonstrate rehabilitation. Second, the resulting reduction in penalties may further discourage agencies from viewing the effort in taking an action as a worthwhile endeavor.

Although OPM is proposing to remove the availability of an appeal of a suitability action to the MSPB, OPM does not propose in this rule to change any of the suitability actions procedures. Those procedures include the following elements, which are also unchanged by the proposals in the June NPRM: written, advanced notice outlining the charges, an opportunity for the respondent to review the materials

relied upon in proposing the action, an opportunity for the individual to respond in writing and provide written evidence, and the opportunity for the respondent to be represented by a representative of the respondent's choice.

OPM's recognition that providing a regulatory right to appeal suitability actions to the MSPB creates inefficiencies and makes agencies less likely to take a suitability action even when such an action is warranted is not new. In April 1991, OPM established an OPM Review Panel (the Review Panel) as a venue to offer individuals an opportunity for an independent review of an unfavorable suitability determination. 56 FR 18650 (April 23, 1991). OPM had hoped that the creation of the Review Panel would afford individuals an appropriate level of protection in response to unfavorable suitability determinations and actions while also decreasing costs, providing appellants with a streamlined resolution to their cases, and cutting down on the number of appeals taken in suitability cases to the MSPB. OPM did not, however, remove the regulatory right for appeal to the MSPB from 5 CFR part 731. In the April 1991 interim regulation, OPM also took away agencies' prior option to determine whether to suspend individuals or retain them in a pay status pending adjudication of their appeals to the MSPB. OPM required agencies to retain individuals in a pay status pending the decision of the Review Panel. Agencies could only execute a 5 CFR part 731 removal action after the Review Panel affirmed an agency decision.

In September 1994, OPM abolished the Review Panel. 94 FR 22918 (September 16, 1994). While the Review Panel effectively provided independent suitability determination reviews, its implementation did not achieve the goals that motivated its creation. Experience showed that many appellants to the Review Panel still proceeded with appeals to the MSPB after the Review Panel's review and decision. OPM now recognizes that streamlining the resolution of suitability determinations requires eliminating MSPB review, not simply providing for separate OPM review.

Based on the inefficiency of allowing suitability appeals to be heard by the MSPB and lessons learned in OPM's prior Review Panel, OPM is proposing to introduce an OPM appeal process to replace the MSPB appeal process for both OPM and agency suitability actions. The OPM appeal process will provide individuals an opportunity for an independent review in a manner that

⁶ 1 U.S. Merit Sys. Prot. Bd., "Frequently Asked Questions about the Lack of Quorum Period and Restoration of the Full Board" (Apr. 9, 2025), https://www.mspb.gov/FAQs_Absence_of_Board_Quorum_4-9-25.pdf.

⁷ MSPB's Annual Reports for FY 2018 through FY 2024 can be found on MSPB's website at https://www.mspb.gov/about/annualreport_archive.htm.

values protections for individuals subject to unfavorable suitability determinations alongside the need to employ efficient and effective processes to ensure applicants, appointees, and employees are suitable for employment and that their conduct protects the integrity and promotes the efficiency of the service. Today, OPM's suitability functions take place in an Office that is split into two separate program areas. This structure ensures that today, suitability adjudicative staff involved in making suitability determinations and taking suitability actions are kept separate and distinct from another group of senior suitability adjudicative staff responsible for supporting OPM on appeals of suitability actions to the MSPB, with both sides reporting through separate supervisory chains of command. Under the proposed OPM appeal process, OPM will retain this structure to maintain decisional and supervisory independence between staff that make suitability determinations and take suitability actions from those that decide appeals of suitability determinations and actions.

In removing the right to appeal to MSPB currently provided in subpart E, OPM is proposing to revise subpart E to establish the following appeal procedures:

- Individuals applying to or occupying competitive service or career Senior Executive Service positions who have been found unsuitable by an agency, to include OPM when acting as an agency, and have been subject to a suitability action may file an appeal with OPM and may present evidence and supporting documentation as to why they believe the underlying determination of unsuitability was incorrect. Individuals will have the right to represent themselves or designate a representative.
- Appeal requests will be adjudicated by OPM personnel who have received training that complies with national training standards for suitability adjudicators. This training will ensure that those entrusted with adjudicating appeals are qualified to review agency suitability determinations and actions.
- In conducting its review of an agency determination and action, OPM will review the written record of the case, the agency decision, and the request for review. OPM will affirm the agency's decision if the action, findings, and conclusions are supported by a preponderance of the evidence, where *preponderance of the evidence* means evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that

the agency's conclusions are more likely to be true than untrue.

- When OPM determines the written record is insufficiently developed to decide the appeal due to disputes involving one or more material facts, OPM will: (1) hold a hearing to evaluate witness credibility to resolve any issue(s) of material fact, (2) conduct an additional investigation, or 3) reverse or vacate the responsible agency's decision, in whole or in part.
- At the conclusion of its review, OPM will prepare a written initial decision affirming, reversing, or affirming with modifications an agency's decision.
- Upon request from either party to the dispute, OPM may reopen and reconsider at its discretion an initial decision.
- There would be no further administrative review or appeal from OPM's final decision.

Under the proposed suitability action appeal procedures, OPM will only review the underlying determination that the individual is unsuitable for Federal employment. The review will focus on the evidence in the record and whether it supports a finding that the individual's conduct demonstrates his or her employment would not protect the integrity or promote the efficiency of the service. Individuals who believe that they have been discriminated against or subjected to a prohibited personnel practice could raise these arguments and present evidence inasmuch as it is relevant to the suitability determination; however, the submission and consideration of any such arguments or evidence would not be considered a legal claim for redress by OPM, and any decision by OPM would be limited to the suitability determination. OPM's decision would not constitute a decision on presence or absence of discrimination or a prohibited personnel practice. Individuals would need to pursue such legal claims in accordance with statutes and regulations governing such claims, for instance following the procedures for filing a claim of discrimination under Equal Employment Opportunity Commission (EEOC) regulations. The EEOC's mixed cases regulation at 29 CFR 1614.302 would not apply. While OPM is best positioned to review suitability determinations and actions, these other entities have experience and regulatory authority to review claims that an agency action was based on underlying discrimination or another prohibited personnel practice.

Section-by-Section Analysis

Subpart E—Suitability Action Appeals

OPM is proposing to revise subpart E in its entirety. Subpart E would be renamed Suitability Action Appeals. As discussed above, OPM's purpose in proposing these changes is to streamline, and thereby speed up, the final decision-making process; and, to that end, OPM's proposed amendments would no longer permit individuals to appeal suitability actions to the MSPB. As is the case today, either at OPM or an agency, suitability determinations and actions will be proposed by a suitability adjudicator, individuals will have an opportunity to respond, and, after the opportunity to respond, a separate suitability adjudicator who was not involved previously in the decision to propose the action will make the decision. Permitting an appeal to MSPB—where actions follow complex litigation practices and those that are not dismissed most often end in settlements and where the recent history of extended periods with a lack of a quorum causes extensive delays and prevents timely resolution of appeals—is ineffective at protecting the integrity and promoting the efficiency of the service through suitability actions. At the same time, to provide individuals with the protection of a secondary independent review, OPM proposes to institute an OPM suitability action appeals process to allow individuals to request a review of an agency's unfavorable suitability determination. This would include OPM determinations when OPM is acting as an agency. It would also include, if the June NPRM is finalized as proposed, OPM determinations made in suitability actions against employees based on post-appointment conduct. Throughout the following analysis, the term “agency” refers to both OPM suitability determinations and actions and those by other agencies.

731.501 Right To Appeal

OPM is proposing to establish an OPM suitability action appeals process. Individuals against whom an agency has taken a suitability action may appeal to OPM and request that OPM review the agency determination that an individual is unsuitable for employment in the competitive service or career Senior Executive Service. Under the proposed procedures, an applicant, appointee, or employee in the competitive service or career Senior Executive Service who has been subject to a suitability action may appeal an agency's underlying decision that he or she is unsuitable for Federal employment based on the specific

factors found at 5 CFR 731.202(b). OPM proposes that an individual may also file an appeal when challenging whether an agency followed proper suitability action procedures as outlined in subparts C and D of part 731. OPM proposes that unfavorable suitability determinations that do not result in a suitability action as defined at 5 CFR 731.101(b) cannot be appealed under this subpart. OPM proposes to make the appeal procedures in this subpart the sole and exclusive means of appealing suitability actions. These procedures would not, however, preclude an individual filing an administrative complaint, appeal, or other matter within another forum, as applicable (e.g., claims of discrimination or a prohibited personnel practice).

731.502 Procedures for Submitting Appeals

OPM proposes to require individuals who wish to file an appeal to do so using OPM's electronic filing system within 30 calendar days of the effective date of the suitability action. OPM anticipates that it will have an e-filing system in place prior to the effective date of a final rule. OPM would not review untimely requests unless the individual demonstrates good cause for the untimely filing. The appellant would bear the burden of proof to demonstrate that an appeal filing is timely as well as demonstrating that the action taken against the individual falls within OPM's jurisdiction under this part. In evaluating whether an appellant has demonstrated good cause for an untimely filing of the appeal, OPM will apply the approach taken by the Merit Systems Protection Board in *Alonzo v. Department of the Air Force*, 4 MSPB 262, 4 M.S.P.R. 180 (1980). In *Alonzo*, the Board established a non-exhaustive set of factors for determining whether an employee establishes good cause for the untimely filing of an appeal. These factors will allow OPM to consider a variety of circumstances using well-established law.

731.503 Form and Content of Suitability Action Appeals and Agency Response

OPM proposes requiring an appellant to provide identifying information and a statement of the basis of the appeal, along with any supporting documentation the appellant deems relevant to the review. When an appellant files a timely appeal, OPM proposes that the agency that took the suitability action must submit the agency's response within 30 calendar days. OPM proposes allowing an appellant to file a reply to an agency

response, but the reply would be limited to addressing only the factual and legal issues raised by the agency in response to the initial appeal.

731.504 Appellant Representatives

OPM proposes individuals may represent themselves or designate a representative, provided that, if the representative is a Federal employee, he or she may not perform such representational functions while in a duty status (including while on official time under 5 U.S.C. 7131), and also may not claim agency reimbursement for any expenses incurred while performing such representational functions. Additionally, OPM proposes that OPM may, in its sole and exclusive discretion, disallow an appellant's choice of a representative if the representative is an employee of the agency or OPM and that employee's representation would result in a conflict of interest or position; that employee cannot be released from his or her official duties because of the priority business needs of the agency; or it would give rise to unreasonable costs to the Government.

731.505 Adjudication of Appeals

OPM proposes to introduce protections to ensure that OPM personnel assigned to adjudicate appeals are free from conflicts of interest. As discussed in the Authority and Background section, the OPM staff taking suitability actions will be kept in a separate work unit and report through a different supervisory chain than those employees responsible for processing and deciding appeals. OPM also proposes to require all personnel adjudicating appeals to have received training that complies with national training standards for suitability adjudicators. Requiring this training will ensure those adjudicating appeals are qualified to review OPM and agency suitability determinations and actions. OPM proposes that, in applying a standard of review, it will affirm the agency's decision if the action, findings, and conclusions are supported by a preponderance of the evidence. OPM proposes that when it determines the written record is insufficiently developed to decide the appeal due to disputes involving one or more material facts, OPM will: (1) hold a hearing to evaluate witness credibility to resolve any issues of material fact, (2) conduct an additional investigation, or (3) reverse or vacate the responsible agency's decision, in whole or in part.

OPM proposes that appellants will receive relief including any back pay, interest, and reasonable attorney fees

consistent with subpart H of part 550 of this chapter when the appellant is the prevailing party. See 5 CFR 550 subpart H. OPM proposes that, when the appellant is the prevailing party, an agency's request for reopening and reconsideration of OPM's initial decision will not stay any requirement to provide relief unless OPM issues a specific order staying such relief. However, when the relief includes payment of back pay, interest, or attorney fees, those payments are not payable until the decision is a final decision in accordance with § 731.509.

731.506 Sanctions and Protective Orders

OPM proposes to prevent harassing communications by the parties via a cease-and-desist directive and penalties for failing to follow a directive from OPM. Specifically, the proposed language would authorize OPM to direct any party to cease-and-desist harassing communications, or communications which could reasonably be foreseen to lead to harassment, with or about any individual. This authority is proposed to be exercised *sua sponte* or at the request of a party. The section further proposes to provide several penalties upon a party failing to comply with such a directive, including drawing all inferences against the noncompliant party, prohibiting the noncompliant party from introducing evidence, or eliminating consideration of any filings or submissions of the noncompliant party.

MSPB procedures, while providing for protective orders, are inadequate to protect Federal employees from threats and harassment. While MSPB permits a party to petition the board for a protective order, it cannot, *sua sponte*, bind a party to a protective order without a motion. Instead, MSPB relies primarily on mutual consent of the parties, which allows for significant abuse by bad actors. The failure to preemptively issue an order provides ample opportunity to those who would channel unwarranted attention, harassing messages, and threats to Federal employees, who neither sought nor deserve public attention, merely for fulfilling their responsibilities. This failure should be corrected to protect rank and file Federal employees seeking to serve the public interest. However, unfortunately, to date, MSPB has proven itself unwilling to take necessary steps to protect Federal employees from threats and harassment. As such, OPM believes it would be prudent and provide much needed protection for Federal employees to adjudicate these appeals by issuing cease-and-desist

directives, with strict consequences for failure to comply.

731.507 Reopening and Reconsideration of an Initial Decision

Under the proposed rule, OPM would, at its sole discretion, be able to reopen and reconsider an initial decision issued under this subpart upon a request from either party to a dispute. The appellant, the appellant's representative, or the agency would have 30 calendar days from the issuance of the initial decision to request reopening and reconsideration. In any case that is reopened and reconsidered, OPM would be able to (1) issue a decision that decides the case; (2) require the parties to submit arguments and evidence; or (3) take any other action necessary for final disposition of the case. OPM would have authority to affirm, reverse, modify, or vacate the initial decision, in whole or in part.

731.508 Review by the OPM Director

In proposed § 731.508, OPM reserves the Director's right, at his or her discretion and *sua sponte*, to reopen and reconsider any decision OPM has issued provided the decision has not yet become final. OPM views this appellate process as necessary to ensure that the Director can supervise adjudicators sufficiently to avoid any serious constitutional concerns from having subordinate officials wield executive authority. Under Article II, the Constitution vests the executive power in the President who must rely upon subordinates to exercise his authority. Adjudicators assigned to adjudicate appeals under this proposed rule exert significant authority that must be properly supervised by a principal officer appointed by the President with Senate consent to avoid a constitutional problem. See *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021).

731.509 Final Decision

OPM proposes that the initial decision will become the final decision of OPM if neither party requests reopening and reconsideration from OPM within 30 calendar days from the date of the initial decision. A decision upon reopening and reconsideration will become OPM's final decision if the Director does not reopen a decision upon reconsideration within 30 calendar days from the date of the reopen and reconsideration decision. A decision by the Director will be the final decision of the agency and is effective upon the date of issuance.

Expected Impact of This Proposed Rule

1. Statement of Need

This rule is needed to streamline suitability action appeals procedures, thereby improving the efficiency, rigor, and timeliness by which OPM and agencies resolve challenges to suitability actions and ensure the integrity and efficiency of the service. The rule fosters greater process efficiency by eliminating appeals to the MSPB for suitability actions while bolstering the procedures by which an individual against whom a suitability action is being taken can appeal. These changes are expected to reduce time and costs while promoting an impartial and effective suitability process that produces sound decisions. This rule also returns control over the timely processing of suitability action appeals to the executive branch, eliminating delays caused by the Senate's failure to confirm Board members at the MSPB. This rule also brings the suitability appeals procedures into compliance with congressional intent, where suitability actions are excluded from standard Chapter 75 procedures, which include appeal rights to the MSPB. Eliminating appeals to the MSPB for suitability actions and providing a process free from extensive delays and backlogs may also increase the likelihood that agencies will act when warranted to protect the integrity and promote the efficiency of the service, rather than the status quo where agencies' decisions to act could potentially be influenced by the prospect of a protracted process that does not provide timely resolution. Although this intangible benefit cannot be quantified, a greater willingness by agencies to hold individuals accountable for misconduct that compromises the efficiency or integrity of the service improves the overall service Americans receive from their Government. On balance, these changes will result in savings to agency operational costs and the American public, while also providing due process and more expeditiously arriving at a resolution that protects the integrity and promotes the efficiency of the service.

2. Impact

Applicants, appointees, and employees in the competitive service, in the excepted service where the incumbent can be noncompetitively converted to the competitive service, and in the career Senior Executive Service would be impacted by the changes proposed in this rule. These are the only categories of individuals currently subject to suitability actions.

OPM anticipates that this proposal would allow these individuals to reach final resolution of a suitability action faster, while still providing due process.

OPM would also be impacted by the proposed changes as OPM would be responsible for operating the OPM suitability action appeal process. Some of this impact would be offset by elimination of OPM adjudicator and attorney responsibilities currently associated with preparing materials and defending the Government's position when respondents appeal OPM's decisions to the MSPB, as that avenue of appeal would no longer be afforded.

3. Costs

The costs associated with this rulemaking could vary depending on the outcome of the June NPRM. If finalized as proposed, the June NPRM would result in additional cost impacts should the changes proposed in this present rulemaking also finalize as proposed. As such, although the proposed changes in this present rulemaking are separate and distinct from the changes proposed in the June NPRM, the cost analysis below addresses the potential impacts if both rulemakings are finalized as proposed.

One-Time Implementation Cost

This proposed rule will affect the operations of most Federal agencies in the Executive branch—ranging from cabinet-level departments to small independent agencies. To comply with the regulatory changes in this proposed rule, affected agencies will need to review the rule and update their policies and procedures. For this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2025 for GS-14, step 5, from the Washington, DC, locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$154.76 per hour. We estimate that, in the first year following publication of the final rule, the effort to update policies and procedures will require an average of 80 hours of work by employees with an average hourly cost of \$154.76. This effort would result in estimated costs in the first year of implementation of approximately \$12,400 per agency, and about \$1 million in total Government-wide.

Recurring Costs

After determining one-time implementation costs, OPM assessed

recurring cost impacts. This total cost impact is determined by calculating two elements: first, cost savings at agencies, OPM, and MSPB from eliminating suitability action appeals to MSPB; and second, costs for agencies and OPM to process suitability action appeals through the proposed OPM appeals process. The difference between cost savings from eliminating labor hours expended on suitability action appeals at MSPB and the new costs for processing these appeals with OPM is the overall cost impact. The assessment looks first at the cost impact of this proposed rule standing alone. It then assesses the combined impact if both this proposed rule and the June NPRM both finalize as proposed.

a. Cost Impacts Solely From Eliminating MSPB Suitability Appeals

1. *Agency/OPM Savings: Eliminating MSPB appeals for suitability actions* will reduce costs at both OPM and agencies, eliminating the need for OPM and agencies to prepare for and participate in MSPB proceedings for suitability actions. OPM estimates that, in the current framework, MSPB hears approximately 63 initial suitability appeals per year, on average, according to its annual reports for 2018–2024.⁸ OPM acknowledges that not all appeals reach a hearing. Based on MSPB's annual reports from 2018–2024, an average of 86% of suitability appeals were either dismissed or settled, meaning, on average, 54 of the 63 initial suitability appeals per year would only proceed through part of the process, with 9 appeals requiring the full investment of time to defend an action through a hearing. The proposed rule would eliminate the costs for both agency and OPM suitability staff and attorneys who support MSPB appeals.

OPM routinely supports appeals of its suitability actions at MSPB, and as such, understands the nature of its staff that support these appeals and the labor hours required. For the purpose of this analysis, OPM assumes that agency staff performing similar duties supporting appeals of agency suitability actions to MSPB are at the same grade level as OPM's staff and that they spend the same average amount of time supporting each appeal. OPM also notes that, although OPM and agency suitability staff and attorneys would have offsetting new costs to support appeals to OPM in the new proposed process, only the cost savings attributable to eliminating the need to support appeals to MSPB is

calculated in this section. The new costs that offset some savings are calculated in a section that follows.

Suitability staff support appeals to MSPB by spending approximately 20 hours preparing packages for attorneys and processing materials relied upon. This work occurs prior to any decision to dismiss or settle an appeal, and therefore the cost is calculated accounting for all 63 appeals. The average salary rate of OPM's suitability personnel performing this work is at the 2025 rate for a GS–13, step 5. Although OPM's suitability personnel are not primarily located in Washington, DC, OPM elects to use the Washington, DC pay locality for this analysis to make its costs representative of agency costs. The 2025 Washington, DC locality rate for a GS–13, step 5 is \$136,658 annually and \$65.48 hourly. OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$130.96, for an annual cost savings from suitability staff of approximately \$165,000. As noted, OPM assumes the average time spent by agency suitability staff on each appeal and the average salary is the same as OPM's suitability staff. The required investment of time for attorneys varies depending on the disposition type of the appeal—dismissed, settled, or decided after hearing. For appeals that proceed through a hearing, approximately 9 per year governmentwide, OPM attorneys spend approximately 100 hours reviewing evidence, preparing submissions, and arguing each appeal before MSPB. For appeals that are dismissed or settled, an average of 54 per year governmentwide, OPM estimates OPM attorneys still spend 50 hours reviewing evidence, preparing submissions, and negotiating settlement agreements. OPM again assumes a similar level of effort by agencies' attorneys and therefore uses these estimates of attorney costs as representative for the entire 63 initial suitability appeals received by the MSPB annually. The average salary rate of attorneys performing this work at OPM is at the 2025 rate for a GS–14, step 5, from the Washington, DC, locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$154.76. OPM again assumes an equivalent cost of labor for agencies' attorneys. Accounting for the difference in hours required based on the outcome of the appeal, OPM estimates annual savings from reduced attorney time of approximately \$554,000. Taking savings

for suitability staff time and attorney time together, the total annual cost savings would be \$719,000.

2. *MSPB's Savings from Reduced Suitability Appeals Workload:* There would also be cost savings at MSPB due to its reduced workload resulting from the proposed rule. OPM again acknowledges that not all appeals result in hearings. Using the above estimates for annual suitability appeals (63), OPM estimates that MSPB would avoid processing 54 appeals that are dismissed or settled and avoid processing another 9 that proceed through a full hearing. OPM assumes initial MSPB decisions are decided by MSPB administrative judges who are paid at the Washington, DC locality rate for a GS–15, step 5 level, with an hourly cost of \$182.04 once adjusted for the true cost of labor. For appeals that proceed through a full hearing, OPM assumes the administrative judges will spend 20 hours processing the appeal, including issuing their decision. For appeals that are dismissed or settled, OPM assumes the administrative judges will spend 12 hours reviewing filings, coordinating settlement discussions, and finalizing settlement agreements. This implies that MSPB will save \$150,000 in total annually by not processing suitability action appeals. OPM acknowledges that there will likely be additional cost savings for MSPB related to MSPB administrative staff hours supporting MSPB's appeals processing. OPM does not have sufficient information to estimate these additional savings accurately, and as such, OPM welcomes any comments on potential additional cost savings impacts. Combined with the annual savings at OPM and agencies, the total estimated annual savings before cost offsets are \$869,000.

3. *Costs of Operating New OPM Suitability Actions Appeals Process:* Operating the OPM suitability actions appeals process will cause OPM to experience increased costs. Above, OPM identified that agencies and OPM would realize savings from its suitability staff and attorneys no longer needing to support suitability action appeals at MSPB. OPM and agencies would experience offsetting costs to support suitability action appeals in OPM's new proposed appeals process. The costs of OPM's proposed appeals process is comprised of four parts: first, the time required by suitability staff at the agency responsible for the action (responsible agency) to prepare its response file for the appeal; second, the time required by OPM's suitability appeals staff to review and decide appeals; third, the cost to hold credibility hearings; and fourth, the cost

⁸ MSPB's Annual Reports for FY 2018 through FY 2024 can be found on MSPB's website at https://www.mspb.gov/about/annualreport_archive.htm.

to OPM's appeal staff to process requests to reopen and reconsider initial decisions.

For the first cost component, OPM's proposed appeals process would still require OPM and agency suitability staff to support these appeals by compiling agency response files. OPM assumes this would be a fully offsetting cost. OPM assumes the 20 hours per appeal saved by suitability staff described above, which came with a cost savings of \$165,000, would need to be redirected in full to supporting appeals to OPM's proposed process, and therefore the \$165,000 savings described above would result in an offsetting \$165,000 cost to support OPM's proposed process, for a net cost of \$0. This work by OPM and agency staff represents the work done by those responsible for taking the suitability actions in defending the action on appeal, separate from OPM staff that would review appeal requests.

For the second cost component that consists of OPM's review of the appeal packages, whether an appeal of an agency action or an OPM action, OPM intends to have a separate cadre of staff who review the appeals and make recommendations to an OPM official for an initial decision. That official would review the file and recommendation and issue the initial decision. OPM estimates its personnel who will review the appeals to make a recommendation will spend 10 hours reviewing each appeal and making a recommendation. OPM assumes an average salary rate of the appeal review personnel at the 2025 rate for a GS-13, step 5, from the Washington, DC locality pay table (\$136,658 annual locality rate and \$65.48 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$130.96. OPM assumes the OPM official reviewing the recommendation and issuing the initial decision will spend 3 hours per appeal. OPM assumes an average salary rate of the official performing this work at the 2025 rate for a GS-14, step 5, from the Washington, DC locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$154.76. To determine the number of appeal requests OPM would process per year, OPM assumes that the 63 initial suitability appeal cases (noted above) that would avoid going to the MSPB under this proposed rule would be submitted to OPM instead.

For the third cost component, agencies and OPM will incur costs

when OPM determines a credibility hearing is necessary to resolve a dispute concerning a material fact that cannot be resolved solely based on the written record. To determine the cost of credibility hearings, OPM assumes that costs for the hearings will come from the following areas: an administrative judge to preside over the hearing; the OPM official deciding the appeal to prepare for and attend the hearing and incorporate the findings of the hearing into the decision; attorneys for the responsible agency to review the file, prepare for the hearing, and participate in the hearing; suitability staff or other staff from the responsible agency to provide materials and support to agency attorneys and participate in the hearing, potentially as a witness; and costs for transcribing the hearings. OPM assumes 6 hours of time for an administrative judge performing this work at the Washington, DC locality rate for a GS-15, step 5 level, with an hourly cost of \$182.04 once adjusted for the true cost of labor OPM assumes 10 hours of time for the GS-14 OPM deciding official at the same \$154.76 hourly rate noted previously for this work. OPM assumes 20 hours of attorney time for the responsible agency's attorney performing this work at the 2025 rate for a GS-14, step 5, from the Washington, DC locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$154.76. OPM assumes 15 hours for the responsible agency's suitability staff or other staff performing this work at the 2025 rate for a GS-13, step 5, from the Washington, DC locality pay table (\$136,658 annual locality rate and \$65.48 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$130.96. OPM assumes a cost of \$2,500 to procure transcription services for each hearing.

For the fourth cost component, OPM will incur costs to process requests to reopen and reconsider initial decisions. OPM assumes that for each request granted, a different GS-13 reviewer will spend 3 hours reviewing the case and making a new recommendation, and that either the same or a different GS-14 deciding official will spend another 2 hours on each request.

Taking together all four cost components to calculate average costs across the 63 suitability appeals per year, OPM's proposed suitability appeals processes based on current-day levels of suitability appeals would cost agencies and OPM approximately

\$294,000 annually. OPM anticipates its current staffing levels will support handling this new workload.

b. Potential Additional Cost Impacts of OPM's June NPRM

As described earlier, on June 3, 2025, OPM proposed changes to subparts A, B, C, and D of part 731. Most notably, the proposed changes would allow agencies and/or OPM to take suitability actions against appointees and employees based on post-appointment conduct. As described in the June NPRM, if the changes proposed in that rulemaking finalize as proposed, some post-appointment misconduct actions that are currently processed under Chapter 75 procedures may be processed as suitability actions under 5 CFR part 731. The key impact of the proposed changes in the June NPRM on this current rulemaking is that an increase in the number of suitability actions taken per year could have a direct effect on the number of suitability action appeals diverted from MSPB to OPM, thereby significantly changing the volume of suitability actions appeals per year from the current 63 per year received by MSPB. To account for this potential impact on the costs associated with the current proposal to move suitability actions appeals from MSPB to OPM, the following cost analysis estimates the additional savings and any offsetting costs in the event the volume of suitability actions increases as a result of the proposed changes to take suitability actions based on post-appointment conduct.

1. *Agency Savings from Fewer Adverse Action Appeals to MSPB:* In the June NPRM, OPM estimated that, if the rule finalizes as proposed, approximately 1,226 removal actions presently taken by agencies under Chapter 75 could be referred to OPM for suitability actions instead. From FY 2021 to FY 2025, OPM found that its own suitability actions were appealed to the MSPB at a rate of 20.8%. OPM assumes that removal actions for misconduct that could be processed as suitability actions if the June NPRM finalizes as proposed are appealed at a similar rate. This would result in an average of 255 appeals per year that shift from being adverse action appeals to suitability action appeals. Under the changes proposed by this current rulemaking, those suitability action appeals would not be appealable to the MSPB, as they would come to OPM instead. This means an average of 255 MSPB initial appeal cases could be avoided. OPM acknowledged above that not all appeals reach a hearing and accounts for this in its calculation of the

costs agencies and OPM would avoid by no longer defending these appeals at the MSPB. Above, based on MSPB's present day processing of suitability appeals, it was determined that suitability appeals are dismissed or settled at a rate of 86%. Applying this same rate to the potential 255 adverse appeals avoided, on average, 219 of the 255 initial adverse action appeals avoided would only proceed through part of the process, with 36 appeals requiring the full investment of time to defend an action through a hearing. Regardless of whether an appeal is dismissed or settled, OPM assumes that agencies' HR personnel spend at least 80 hours preparing for MSPB adverse action appeals. OPM assumes an average salary rate of agencies' supervisory and HR personnel performing this work at the 2025 rate for a GS-15, step 5, from the Washington, DC locality pay table (\$189,950 annual locality rate and \$91.02 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$182.04, with a total staff savings of \$3.7 million. OPM assumes agency attorneys spend a further 100 hours reviewing evidence, preparing submissions, and arguing each of the 36 appeals that go through a hearing. As noted previously, OPM assumes the average time spent by agency counsel on each appeal and the average salary is the same as OPM's counsel that handles suitability appeals. For appeals that are dismissed or settled, an average of 219 per year, OPM estimates attorneys still spend 50 hours reviewing evidence, preparing submissions, and negotiating settlement agreements. OPM assumes an average salary rate of agencies' attorneys performing this work at the 2025 rate for a GS-14, step 5, from the Washington, DC, locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). OPM assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$154.76, and a total savings in attorneys costs of \$2.2 million. Taken together, the total annual cost savings to agencies would be roughly \$6 million.

2. MSPB's Savings from Reduced Adverse Action Appeals Workload: There would also be cost savings at MSPB due to its reduced workload resulting from avoiding 255 initial appeals that would be processed with OPM as suitability action appeals instead of adverse action appeals at MSPB. OPM again acknowledges that not all appeals result in hearings. Using the above estimates, OPM estimates that MSPB would avoid processing 219

appeals that are dismissed or settled and avoid processing another 36 that proceed through a full hearing. OPM again assumes initial MSPB decisions will be decided by MSPB administrative judges who are paid at the GS-15, step 5 level, with an hourly cost of \$182.04. For appeals that proceed through a full hearing, OPM assumes they will spend 20 hours conducting each hearing and preparing their decision. For appeals that are dismissed or settled, OPM assumes they will spend 12 hours reviewing filings, coordinating settlement discussions, and finalizing settlement agreements. This implies that MSPB will save \$609,000 yearly by avoiding processing adverse actions appeals that would be processed instead by OPM as suitability actions appeals. OPM again acknowledges that there will likely be additional cost savings for MSPB related to MSPB administrative staff hours supporting MSPB's appeals processing. OPM again does not have sufficient information to estimate these additional savings accurately, and as such, OPM welcomes any comments on potential additional cost savings impacts. Combined with the annual savings at OPM and agencies, the total estimated annual savings before cost offsets is \$6.6 million.

3. Additional Costs for OPM Suitability Actions Appeals Process: An increase of 255 suitability action appeals resulting from current adverse actions removals being processed as suitability actions would increase OPM's costs to operate its suitability actions appeals process. OPM assumes that the same four cost components used to calculate the cost of its proposed suitability appeals would apply, with only an adjustment to the volume of suitability appeals processed. Therefore, OPM applies the same assumptions for the rate of pay of staff at agencies and OPM performing the work that makes up the four cost components and the number of hours required for each part of the process as described in section a. of Recurring Costs. Taking together all four cost components and averaging out costs across the potential additional 255 suitability appeals per year, OPM's proposed suitability appeals processes would cost agencies and OPM approximately \$1.2 million annually. OPM anticipates that its current adjudicatory personnel could assume the preparatory work to compile agency response files and respond to information requests for appeals of OPM's own suitability actions. For the work described of reviewing appeals and making recommendations for initial appeal decisions, OPM anticipates that

it would likely need to increase the number of resources to handle the new workload if the June NPRM finalizes as proposed and the estimated 255 adverse actions appeals become suitability actions appeals. OPM estimates it would likely need 2 additional personnel at the 2025 rate for a GS-13, step 5, from the Washington, DC locality pay table as described above.

c. Total Cost Impact

There are two potential total cost impacts considered. The first total cost impact is restricted solely to the proposal in this present rulemaking to move the venue for appeals of suitability actions for the competitive service and career SES from MSPB to OPM. Taking into account cost savings from avoiding the costs of appeals to MSPB and new costs associated with the proposed OPM suitability action appeal process, assuming the volume of suitability action appeals remains consistent with current levels reported in MSPB's Annual Reports, the proposed changes would result in an annual cost savings to the government of approximately \$574,000.

Then, there are the additional total cost implications if both the present rulemaking and the June NPRM finalize as proposed. Taking into account both decreases and increases in levels of effort associated with the potential for an increased volume of suitability action appeals stemming from the June NPRM, the result would be an additional annual savings for the government of \$5.4 million. Combined with the annual savings associated with this current proposed rule based on present day levels of suitability actions (\$574,000), OPM estimates an annual net savings of \$5.9 million should both the present proposed rulemaking and the June NPRM finalize as proposed. These recurrent annual savings are separate from the one-time implementation costs of approximately \$990,464 OPM anticipates resulting from this current proposed rulemaking.

OPM notes that its estimates do not include any costs (or savings) to individuals due to changes in rates of representation. OPM requests comment on these effects, as well as other impacts of the rule.

4. Benefits

The expected benefits of the proposed rule are to foster greater process efficiency by eliminating appeals to the MSPB for suitability actions while bolstering the procedures by which an individual against whom a suitability action is being taken can appeal that action and unfavorable suitability

determination. These changes are expected to reduce time and costs while promoting an impartial and effective suitability process that produces sound decisions and removes unsuitable individuals from the Federal service. This rule will also provide the executive branch with more control over its ability to process suitability appeals in a timely manner by removing the process' dependency on the Senate confirming MSPB board members. This rule also brings the suitability appeals procedures into compliance with congressional intent, where suitability actions are excluded from standard Chapter 75 procedures, which include appeal rights to the MSPB. On balance, these changes will result in savings to agency operational costs and the American public, while also providing due process and more expeditiously arriving at a resolution that protects the integrity and promotes the efficiency of the service.

5. Alternatives

OPM could decide to retain the existing procedures by which individuals against whom a suitability action is taken may appeal the action to the MSPB; however, the streamlining of the final decision process is expected to result in greater efficiency than is currently borne out in the process by which individuals may appeal suitability actions to the MSPB. It is also expected to produce decisions that better protect the integrity and efficiency of the Federal service.

Another alternative is that OPM could attempt to implement an OPM suitability appeals process that still allows individuals to appeal to the MSPB after first passing through the OPM process. Upon reviewing the prior failings of the OPM Review Panel in the 1990s, OPM believes that, even with adjustments, any process that still affords appeals to the MSPB would be cost prohibitive upon implementation and delay resolution of appeals beyond what is seen today.

Severability

OPM proposes that, if any of the provisions of this proposed rule as finalized is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. For example, if a court were to invalidate any portions of this proposed rule as finalized removing appeal procedures, the other portions of

the rule—including the portions providing that suitability appeals must be electronically filed with OPM—would independently remain workable and valuable. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

Regulatory Compliance

1. Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of Executive Order 12866, as supplemented by Executive Order 13563. This proposed rule is expected to be an Executive Order 14192 deregulatory action.

2. Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule will apply only to Federal agencies and individuals.

3. Federalism

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

4. Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

5. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in

the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

6. Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

Depending on the population, currently suitability and vetting information is collected through the following OMB Control Numbers.

- 3206–0261 (Standard Form 85, Questionnaire for Non-Sensitive Positions)
- 3206–0258 (Standard Form 85P, Questionnaire for Public Trust Positions and SF 85P–S, Supplemental Questionnaire for Selected Positions)
- 3206–0005 (SF 86, Questionnaire for National Security Positions)

Additional information regarding these collections of information—including all current supporting materials—can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number. Data gathered through these information collections fall under the following system of record notice: Personnel Vetting Records System, DUSDI 02–DoD (83 FR 52420).

In addition, OPM suitability adjudication records currently are covered by the system of record notice (SORN) CENTRAL–9 (81 FR 70191). OPM is reviewing that SORN in light of the changes proposed in this rulemaking and the changes proposed in the June NPRM. OPM will publish any proposed changes to its SORNs in the **Federal Register**. Individual agencies should each have a SORN that covers the agency adjudication records. Agencies may need to evaluate whether the agency-specific SORNs should be updated to include sharing information with OPM as part of the appeals process.

On November 15, 2023, a new information collection, the Personnel

Vetting Questionnaire (PVQ), was approved (OMB Control Number 3206–0279). The Defense Counterintelligence and Security Agency (DCSA) is working to implement the new information collection. OPM plans to discontinue the current information collections once the PVQ is operational.

OPM believes this rulemaking does not require any changes in any of these collections.

OPM is creating an e-filing system for use in collecting and maintaining adjudication records for a variety of different existing regulatory provisions. That system would also be used to support this proposal. OPM is publishing a separate notice in the **Federal Register** requesting OMB approval of a new information collection associated with the e-filing system. OPM is also reviewing its SORNs to determine whether to revise an existing SORN or to create a new SORN for the e-filing system. OPM will publish any proposed changes to its SORNs in the **Federal Register**.

List of Subjects in 5 CFR Part 731

Administrative practices and procedure, Authority delegations (government agencies), Government contracts, Government employees, Investigations.

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Dated: January 29, 2026

Jerson Matias,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM is proposing to amend 5 CFR part 731 as follows:

PART 731—SUITABILITY AND FITNESS

- 1. The authority citation for part 731 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 7301. E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218, as amended. E.O. 13467, 73 FR 38103, 3 CFR, 2009 Comp., p. 198, as amended. E.O. 13488, 74 FR 4111, 3 CFR, 2010 Comp., p. 189, as amended. E.O. 13764, 82 FR 8115, 3 CFR, 2017 Comp. p. 243. Presidential Memorandum of January 31, 2014, 3 CFR, 2014 Comp., p. 340. 5 CFR parts 1, 2, 5, and 6.

Subpart E—[REVISED]

- 2. Revise Subpart E to read as follows:

Subpart E—Suitability Action Appeals

Sec.

- 731.501 Right to appeal.
- 731.502 Procedures for submitting appeals.
- 731.503 Form and content of suitability action appeals and agency response.
- 731.504 Appellant representatives.
- 731.505 Adjudication of appeals.
- 731.506 Directives and penalties.
- 731.507 Requests for reconsideration of an initial decision.
- 731.508 Review by the OPM Director.
- 731.509 Final decision.

§ 731.501 Right to appeal.

(a) *Right to appeal.* An applicant, appointee, or employee (“appellant”) may appeal to OPM a suitability action taken against the appellant because of an unfavorable suitability determination.

(b) *Appealable issues*—(1) *Unfavorable suitability determination.* The appellant may contest the determination that he or she is unsuitable for federal employment based on the specific factors found at § 731.202(b) provided that the unfavorable suitability determination resulted in a suitability action as defined at § 731.101(a).

(2) *Improper procedure.* An appellant who has been subject to a suitability action may challenge the failure to provide:

(i) Advance written notice stating the charge(s) and specific reason(s) for the proposed action and notifying the appellant of the right to answer the notice in writing and to review, upon request, the materials relied upon;

(ii) Notice of the right to be represented by a representative chosen by the appellant;

(iii) A minimum of 30 calendar days from the date of the notice of proposed action to file a written response and furnish documentation; or

(iv) A written decision delivered to the appellant that explains the decision and the procedures for appealing the decision.

(c) *Nonappealable issues.* An applicant, appointee, or employee may not appeal an unfavorable suitability determination that does not result in a suitability action as those actions are defined at § 731.101(a).

(d) *Exclusive appeal procedure.* The procedures in this subpart are the sole and exclusive means of appealing a suitability action. These procedures do not preclude an applicant, appointee, or employee from filing an administrative complaint, appeal, or other matter within the jurisdiction of another adjudicatory body (e.g., Equal Employment Opportunity Commission) with that entity.

§ 731.502 Procedures for submitting appeals.

(a) *Filing an appeal.* An applicant, appointee, or employee, or the individual’s designated representative acting on his or her behalf, may file the appeal with OPM. An individual seeking to file an appeal or requesting OPM reopen and reconsider a decision under this subpart must utilize the electronic filing system available at {URL TBD}. Absent an exception, OPM will not accept delivery via U.S. mail, commercial delivery service, or electronic mail.

(b) *Time limits.* An appellant may file an appeal within 30 calendar days from the effective date of a suitability action. An appeal is deemed timely when it is electronically filed by 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action.

(1) In computing the number of days allowed for filing an appeal, the first day counted is the day after the effective date of the suitability action. In the case of an appointee or employee, the effective date of the action is the date the employing agency effectuates the suitability action, regardless of whether the agency is effectuating its own action or an OPM action. In the case of an applicant, the effective date of the action is the date on the notice of final action. When a notice of final action is served on an applicant by mail, 10 calendar days are added to the date of the notice for the deadline to file an appeal. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

(2) If an individual does not file an appeal within the time set by this section, the appeal will be dismissed as untimely filed unless the individual demonstrates good cause for an untimely appeal. The determination of good cause will be in the sole and exclusive discretion of OPM.

(3) The appellant bears the burden to demonstrate, by a preponderance of the evidence, the timeliness of the appeal.

(c) *Jurisdiction.* The appellant bears the burden to demonstrate, by a preponderance of the evidence, that OPM possesses jurisdiction over the appeal. To demonstrate this, the appellant must submit evidence that establishes he or she was subject to a suitability action as an applicant, an appointee, or an employee in the competitive service or the career Senior Executive Service.

(d) *E-filing procedures.*

(1) All parties and their representatives to an appeal or reopen and reconsideration must register as

instructed by OPM on its suitability action appeals website using a unique email address.

(2) Registration as an e-filer constitutes consent to accept electronic service of pleadings, evidence, notices, orders, and other documents filed by other e-filers or issued by OPM. No party may electronically file any document with OPM or access an appeal or reconsideration of an appeal unless registered as an e-filer.

(3) All notices, orders, decisions, and other documents issued by OPM, as well as all documents filed by parties, will be made available for viewing and downloading at OPM's electronic filing system. Access to documents is limited to the parties and their representatives who are registered as e-filers in the cases in which they were filed.

(4) All parties and their representatives must follow the instructions on OPM's website for properly filing all pleadings, evidence, and other documents. OPM may issue orders regulating the method and form of submissions and sanctions for noncompliance and may order any party or authorized individual to cease participation as an e-filer in circumstances that constitute a misuse of the system or a failure to comply with law, rule, regulation, or policy governing the use of a U.S. government information system.

(5) Each e-filer must promptly update their profile in OPM's electronic filing system and notify OPM and other parties of any change in their address, telephone number, or email address by filing a pleading in each pending case with which they are associated. E-filers are responsible for monitoring case activity regularly in OPM's electronic filing system to ensure that they have received all case-related documents.

(6) A party or representative may withdraw their registration as an e-filer pursuant to the requirements posted on OPM's website. Withdrawing registration in OPM's electronic filing system means that, effective upon OPM's processing of a proper withdrawal, pleadings, evidence, orders, and other documents filed by a party or party's representative and OPM will no longer be served on that person electronically and that person will no longer have electronic access to their case records through OPM's electronic filing system. OPM may still process an appeal or request for reconsideration after a party withdraws as an e-filer. Withdrawal as a party or party's representative will not be considered good cause for staying a case. A withdrawal of registration as an e-filer

may preclude future re-registering as an e-filer.

(7) OPM, in its sole and exclusive discretion, may exempt a party or representative from registering as an e-filer for good cause. A party or representative must promptly contact OPM as instructed on OPM's website to request an exemption from the e-filing requirements in this subpart. OPM will not find good cause for failing to timely file an appeal or seek reconsideration if the party or representative fails to contact OPM to request an exemption before any deadline to appeal or seek reconsideration.

(8) Documents filed in OPM's electronic filing system are deemed received on the date of the electronic submission.

§ 731.503 Form and content of suitability action appeals and agency response.

(a) *Appeal.* An appeal must be in writing and must contain the appellant's legal name, physical address, mailing address where different from physical address, email address, and phone number and his or her representative, if any. The appeal must also name the agency that took the action the appellant is appealing; state the basis of the appeal; and include any documentation supporting the appellant's appeal.

(b) *Agency response.* Upon receipt of the appeal, OPM will notify the agency responsible for the suitability action (responsible agency) of the presence of the appeal. Unless the OPM adjudicator processing the appeal provides otherwise, the responsible agency must file its response to an appeal within 30 calendar days of notification of the appeal; include all documents contained in the agency record of the action; include a designation of and signature by the authorized agency representative; and any other documents or responses requested by OPM.

(c) *Reply.* Unless the OPM adjudicator provides otherwise, the appellant may file a reply to an agency response to an initial appeal utilizing the electronic filing system within 15 calendar days of the agency response. The reply may only address the factual and legal issues raised by the agency in response to the appeal.

(d) *Inspection of OPM's appellate record.* The parties may inspect OPM's appellate record on request.

(e) *Service of Documents.* The parties will serve on each other copies of any and all information submitted to OPM with respect to an appeal. Such information must be served on all other parties at the same time the information is submitted to OPM and must be

accompanied by a certificate of service stating how and when service was made.

(f) *Untimely Filings.* Untimely filings may be accepted upon a party's showing of good cause at the sole and exclusive discretion of OPM.

§ 731.504 Appellant representatives.

An appellant may select a representative of his or her choice to assist in the preparation and presentation of an appeal, provided that the appellant submits his or her designation of representative in writing related to the specific appeal. If the selected representative is a Federal employee, the representative may not perform such representational functions while in a duty status (including while on official time under 5 U.S.C. 7131), nor may the representative claim agency reimbursement for any expenses incurred while performing such representational function. OPM or the responsible agency may, in its sole and exclusive discretion, disallow an appellant's choice of representative when the representative is an employee of the responsible agency or OPM and his or her activities as a representative would cause a conflict of interest or position; that employee cannot be released from his or her official duties because of the priority needs of the Government; or that employee's release would give rise to unreasonable costs to the Government.

§ 731.505 Adjudication of appeals.

(a) *Appeals by applicants and non-OPM appointees or employees.* OPM will assign OPM personnel to adjudicate an appeal under this subpart. However, no OPM employee may be assigned to adjudicate an appeal if the employee has a prior relationship with the appellant. When the suitability action under appeal was taken by an agency other than OPM, the OPM employee assigned to adjudicate the appeal must not have been an employee of the non-OPM agency that is party to the action during the two years prior to the date on which the appeal was filed. When a suitability action taken by OPM is appealed, there must be appropriate independence between the OPM employee assigned to hear the appeal and the OPM employee(s) involved in the decision to take the suitability action. When necessary, OPM may appoint an administrative law judge to adjudicate an appeal.

(b) *Appeals by OPM appointees or employees.* OPM will assign an administrative law judge to adjudicate an appeal under this subpart by an OPM appointee or employee. To insulate the

adjudication of its own personnel's appeals from agency involvement, OPM will not disturb initial decisions in those cases unless a party shows there has been harmful procedural irregularity in the proceedings or that the administrative law judge has made a clear error of law. For these purposes, the term *harmful procedural irregularity* means an irregularity in the application of procedures was likely to have caused the administrative law judge to reach a conclusion different from the one he or she would have reached in the absence or cure of the irregularity.

(c) *Training of personnel assigned to adjudicate appeals.* All OPM employees or administrative law judges assigned by OPM to adjudicate appeals under this subpart must have completed training that complies with national training standards for suitability adjudicators that qualifies them to review OPM and agency suitability determinations and actions.

(d) *Ascertainment of facts.* (1) In the course of adjudicating an appeal, OPM may independently investigate the facts underlying an unfavorable suitability determination by requesting additional written records from the appellant or the responsible agency.

(2) Before conducting an investigation, OPM will inform the appellant and the responsible agency of the investigation and nature of the records requested.

(3) Upon completion of an investigation, OPM will provide the appellant and the responsible agency with a copy of any information obtained through the investigation, and a reasonable opportunity to submit arguments or additional information to support their positions.

(4) When OPM determines the written record is insufficiently developed to decide the appeal due to disputes involving one or more material facts, OPM will:

(i) Hold a hearing to evaluate witness credibility to resolve any issues of material fact,

(ii) Conduct an investigation in accordance with paragraphs (1)–(3) of this section, or

(iii) Reverse or vacate the responsible agency's decision, in whole or part.

(5) OPM will assign an administrative judge to preside over witness credibility hearings held under this paragraph (d).

(e) If a party fails to participate in an investigation or witness credibility hearing pursuant to paragraph (d), OPM may, except when prohibited by law, impose any sanction listed at § 731.506(b)(1)–(3).

(f) *Standard of review.* OPM will base its review of an unfavorable suitability

determination and consequent suitability action solely on the written record and, if applicable, any witness credibility hearing conducted pursuant to paragraph (d)(4). OPM will affirm the suitability action if the suitability determination is supported by a preponderance of the evidence.

(g) *Initial decision.* OPM may issue an initial decision that affirms, reverses, modifies, or vacates the unfavorable suitability determination and consequent suitability action, in whole or in part. OPM will notify the appellant and responsible agency in writing of its decision on the appeal.

(h) *Remedies.* (1) If the appellant is the prevailing party, OPM will order relief including correction of the suitability action and any back pay, interest, and reasonable attorney fees consistent with subpart H of part 550 of this chapter. The appellant as a prevailing party is not entitled to compensatory damages or other relief not authorized under 5 U.S.C. 5596(b).

(2) If a party timely requests reopening and reconsideration of an initial decision or the OPM Director reopens and reconsiders an initial decision, the responsible agency must continue to provide ordered relief unless OPM issues an order staying any such relief. No such stay may be ordered that would deprive pay and benefits to the individual while the initial decision is pending reconsideration.

(3) Any back pay, interest, or attorney fees ordered are not payable until the decision is a final decision in accordance with § 731.509.

§ 731.506 Sanctions and protective orders.

(a) *Cease-and-desist order.* OPM may issue an order to a party to prevent or to cease-and-desist harassing communications (or communications which could reasonably be foreseen to lead to harassment) with or about any individual, or to prohibit a party from using any information related to the appeal for any purpose whatsoever unrelated to the adjudication of the appeal. OPM may do this *sua sponte*, or at the request of a party, preemptively or at any juncture in the appeal process. A party requesting OPM to issue a protective order or cease-and-desist order should file such request using the e-filing procedures proscribed at § 731.502(d), and must include a statement of reasons justifying the request, together with any relevant documentary evidence.

(b) *Failure to comply with an OPM order.* When a party to an appeal fails to comply with an order issued under paragraph (a), OPM may, except when prohibited by law:

(1) Draw all inferences in opposition to the noncompliant party with regard to the appeal in question;

(2) Prohibit the noncompliant party from introducing evidence, or additional evidence, concerning the appeal, or otherwise relying on the record; or

(3) Eliminate from consideration any appropriate part of the filings or other submissions of the noncompliant party.

§ 731.507 Requests for reconsideration of an initial decision.

(a) Upon a request from either party to the dispute, OPM may, in its sole and exclusive discretion, reopen and reconsider an initial decision issued under this subpart. A party may request reopening and reconsideration of an initial decision within 30 calendar days from issuance of the initial decision.

(b) The request to reopen and reconsider must be filed using the electronic filing system available at {URL TBD} and must explain how the ground(s) relied on affected the outcome of the case. Any documents or further filings related to a request to reopen and reconsider must be filed at the same time the request is submitted.

(c) Grounds for which OPM may grant a request to reopen and reconsider are:

(1) The initial decision contains an erroneous finding of material facts sufficient to warrant a different outcome;

(2) The initial decision is based on an erroneous interpretation of statute or regulation or the erroneous application of the law to the facts of the case. The party must explain how the error affected the outcome of the case;

(3) New and material evidence or legal argument is available that, despite the party's due diligence, was not available when the record closed. To constitute new evidence, the information contained in the documents, not just the documents themselves, must have been unavailable despite due diligence when the record closed; or

(4) OPM finds good cause to reopen and reconsider an appeal.

(d) In any appeal that is reopened and reconsidered, OPM may:

(1) Issue a reopened and reconsidered decision ("R&R decision") that affirms, reverses, modifies, or vacates the initial decision, in whole or in part;

(2) Require the parties to submit argument and evidence;

(3) Take any other action necessary for final disposition of the case; and

(4) Issue an order with a date for compliance with the R&R decision.

(e) There is no further right of administrative appeal from the R&R decision.

(f) Untimely filings may be accepted upon a party's showing of good cause at the sole and exclusive discretion of OPM.

§ 731.508 Review by the OPM Director.

The OPM Director may, at his or her discretion, *sua sponte*, reopen and reconsider any appeal in which OPM has issued a decision that has not yet become final.

§ 731.509 Final decision.

(a) The initial decision becomes OPM's final decision if a party does not request OPM to reopen and reconsider the initial decision within 30 calendar days of the date of the initial decision was issued.

(b) A R&R decision pursuant to § 731.507 becomes OPM's final decision if the OPM Director does not reopen the decision pursuant to § 731.508 within 30 calendar days of the date on which the R&R decision was issued.

(c) A decision by the OPM Director pursuant to § 731.508 is OPM's final decision and is effective upon the date of issuance.

(d) There is no right of appeal of OPM's final decision.

[FR Doc. 2026-02449 Filed 2-5-26; 8:45 am]

BILLING CODE 6325-66-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 944

[Doc. No. AMS-SC-24-0044]

Kiwifruit Grown in California and Imported Kiwifruit; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Kiwifruit Administrative Committee (Committee) to update the handling regulations for kiwifruit grown in California. Consistent with the Committee's proposal, this rulemaking seeks to amend the Size Designation and Size Variation chart located in the pack requirements of the Marketing Order and relax the minimum size requirements for all kiwifruit varieties, except for those of the *Actinidia chinensis* species. This rule also proposes to make a corresponding change to the size requirements under the kiwifruit import regulation, as required under section 8e of the

Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by April 7, 2026.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237. Comments can also be sent to the Docket Clerk electronically by email: MarketingOrderComment@usda.gov; or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public, and can be viewed at: <https://www.regulations.gov>. Please be advised that comments are posted to [regulations.gov](https://www.regulations.gov) without change.

FOR FURTHER INFORMATION CONTACT:

Bianca Bertrand, Marketing Specialist, or Abigail Maharaj, Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; telephone: (559) 487-5901; or email: BiancaM.Bertrand@usda.gov or Abigail.Maharaj@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the Act), amending Marketing Order No. 920 (7 CFR part 920; the Order), regulating the handling of kiwifruit grown in California. The Committee locally administers the Order and is comprised of growers and handlers operating within the production area, and a public member.

This proposed rule is also issued under section 8e of the Act (7 U.S.C. 608e-1), which provides that whenever certain specified commodities, including kiwifruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for domestically produced commodities.

This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This proposed rule is not intended to have a retroactive effect.

Under the Order, fresh market shipments of kiwifruit produced in California are required to be inspected and are subject to grade, size, quality, maturity, pack, and container requirements. This proposed rule would make changes to the Size Designation and Size Variation chart in the Order's pack requirements to facilitate the handling of large sizes of kiwifruit under the Order. In addition, this proposed rule would relax the Order's minimum size requirement for all kiwifruit, other than varieties of the *Actinidia chinensis* species. As required by section 8e of the Act, the proposed relaxation of the minimum size requirement for non-*Actinidia chinensis* species varieties would also be applied to the import regulations for kiwifruit in 7 CFR part 944.

Section 920.51 of the Order authorizes the Committee to recommend handling regulations to the Secretary. Section 920.52 of the Order authorizes the Secretary to establish such handling regulations. Further, § 920.53 authorizes the Committee to recommend the modification, suspension, or termination of handling regulations when it finds that industry conditions so dictate. Section 920.302 establishes the minimum grade, size, quality, maturity, pack, and container requirements for kiwifruit handled subject to the Order. Section 920.302(a)(2) establishes the Order's minimum size requirements and § 920.302(a)(4) details the Order's pack requirements. Section 920.302(a)(4) includes a Size Designation and Size Variation Chart that specifies the allowable kiwifruit size designations, the maximum number of fruit per 8-pound sample for each size designation, and the corresponding allowable size variation tolerance.

Pursuant to 7 CFR 920.53, the Committee determined that the production and marketing conditions

for some varieties of kiwifruit have changed and that the Order's handling requirements should be modified accordingly. The Committee met on April 9, 2024, and unanimously recommended, with a vote of twelve in favor and none opposed, relaxing the Order's minimum size requirement in § 920.302(a)(2) for non-*Actinidia chinensis* species varieties and modifying the Size Designation and Size Variation Chart in § 920.302(a)(4) to conform to the current production and marketing environment for California kiwifruit.

At the time that the Order's handling regulations were established in 1985, practically all the kiwifruit grown in California were similar varieties of the *Actinidia deliciosa* species. Recently, the introduction of a new variety of kiwifruit developed in Greece, known as Mega Kiwi, has resulted in the need for larger sizes to be defined in the Size Designation and Size Variation chart in § 920.302(a)(4). Currently, the largest size designation in the pack requirement chart is size "18 or larger", defined as a maximum of 25 pieces of kiwifruit per 8-pound sample. The term "or larger" means that larger sizes may be packed, but there is no designation for what those sizes should be or how they might be defined (e.g., number of fruit per 8-pound sample).

It has been industry practice since the Order was first established that handlers may define their own sizes for fruit that is larger than Size 18. It has been acceptable for each handler to determine their own size (Size 17, 16, 15, 14, 13, etc.) and determine the number of fruit per 8-pound sample, so long as each larger size has fewer fruit per 8-pound sample than the immediately smaller size that they pack. This practice has provided an inconsistent sizing standard for shipments of large size fruit and created complications for inspections. However, until recently, the percentage of total shipments comprised of Size 18 or larger kiwifruit had been relatively small and the lack of definition for such fruit had not created problems for the industry.

The Committee also reviewed the current minimum size requirement in 7 CFR 920.302(a)(2) for varieties of the non-*Actinidia chinensis* species kiwifruit. The industry indicated that for Size 45, 55 pieces of fruit allowed per 8-pound sample was too restrictive of a requirement. The industry consensus was that Size 45 was the appropriate minimum size, but that the number of pieces allowed in an 8-pound sample needed reconsideration.

At the April meeting, the Committee indicated that the recent introduction of the Mega Kiwi variety necessitated adding new size designations, including appropriate definitions, and making other modifications in the Size Designation and Size Variation chart in § 920.302(a)(4) to facilitate the regulation of the larger size kiwifruit.

Therefore, this proposed rule would amend the Size Designation and Size Variation Chart in 7 CFR 920.302(a)(4) by removing the words "or larger" from the size designation "18 or larger", leaving only size "18" in its place. Further, this rulemaking would add a Size 12, defined as a maximum of 19 pieces of fruit per 8-pound sample, and a Size 15, defined as maximum of 22 pieces of fruit per 8-pound sample. Both of the proposed new size designations in the chart (12 and 15) would include a 1-inch size variation tolerance.

Further, the allowable size variation tolerance for the revised size 18 would increase from 1/2-inch to 1-inch and the size variation tolerance for size 45 would increase from 1/4-inch to 3/8-inch. The maximum number of fruit per 8-pound sample for Size 45 would be increased from 55 pieces to 56 pieces.

The size requirements under the Order require that all varieties of kiwifruit, except for varieties of the *Actinidia chinensis* species, shall be a minimum of Size 45, defined as a maximum of 55 pieces of fruit per 8-pound sample. This proposed rule would relax the minimum size requirement in § 920.302(a)(2) for all varieties of kiwifruit, other than those of the *Actinidia chinensis* species, by redefining Size 45 as maximum of 56 pieces of fruit per 8-pound sample.

Section 8e of the Act provides that when certain domestically produced commodities, including kiwifruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this proposed rule would relax the minimum size requirement for varieties other than those of the *Actinidia chinensis* species, a corresponding change to § 944.550 of the import regulations is also proposed. Under the kiwifruit import regulations, imported kiwifruit are not subject to container and pack requirements. Accordingly, the modifications to the Order's pack requirements, as proposed herein, would not affect the kiwifruit import requirements.

This proposed rule would make changes to the Size Designation and Size Variation chart in the Order's pack requirements and would relax the minimum size requirement for all

varieties of kiwifruit, other than varieties of the *Actinidia chinensis* species. The proposed changes in the Order's handling regulations are expected to benefit growers, handlers, and consumers of domestic kiwifruit.

The relaxation in the size requirement for imports of non-*Actinidia chinensis* varieties would allow a greater quantity of kiwifruit to be imported under the regulations. This change is expected to benefit kiwifruit importers and consumers of imported kiwifruit.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique regulations in that they are brought about through group action of typically small entities acting on their own behalf.

There are approximately 108 kiwifruit growers in the production area and 19 handlers subject to regulation under the Order. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural producers as those having annual receipts equal to or less than \$3,500,000 (NAICS code 111339, Other Noncitrus Fruit Farming). Small agricultural service firms, which include kiwifruit handlers, are defined by the SBA as those having annual receipts equal to or less than \$34,000,000 (NAICS code 115114, Postharvest Crop Activities) (13 CFR 121.201).

The USDA National Agricultural Statistics Service (NASS) reported an average 2024 California kiwifruit grower received price of \$3,140 per ton and an average yield of 6.8 tons per acre. Dividing the SBA threshold for a small kiwifruit grower of \$3.5 million by the \$3,140 per ton grower received price and then by the yield of 6.8 tons per acre results in approximately 164 acres that would be required for a kiwifruit grower to reach \$3.5 million in annual receipts. Therefore, AMS concludes that a kiwifruit grower would need 165 bearing acres to be considered "large" per the SBA definition. According to the 2022 Census of Agriculture, published by NASS in February 2024, 10 farms out of the 108 total kiwifruit farms with bearing acreage in California had 100 or

more bearing acres. This means that more than 90 percent of farms, or growers, would be considered small businesses under the SBA definition and AMS's analysis.

To estimate the number of handlers that would be considered small per the SBA definition of no more than \$34 million in average annual receipts, AMS first estimates a total handler value using the 2024 California production figure of 35,400 tons of kiwifruit, published by NASS, and a 2024 average handler price of \$3,700 per ton, calculated using terminal market prices reported by AMS Market News. The product of these two results in a total handler value of nearly \$131 million (35,400 tons multiplied by \$3,700 per ton). This result assumes that 100 percent of all domestically produced kiwifruit was handled by domestic handlers and that these domestic handlers only handled domestic kiwifruit. Dividing total handler value (\$131 million) by the SBA definition of a small business of \$34 million in average annual receipts indicates that no more than three handlers of the 19 in total could exceed this threshold and be considered "large" per the SBA definition. Therefore, at least 84 percent of handlers (19 minus 3 divided by 19 multiplied by 100) would be considered to be small businesses under the SBA definition and AMS's analysis.

All kiwifruit marketed under the Order will continue to be packed to the minimum grade of KAC No. 1. This proposed rule would only impact the Order's pack and size requirements. This proposed rule would add two new size designations (Size 12 and 15) to the chart in the Order's pack requirements. Each new size designation would be assigned a corresponding maximum number of fruit per 8-pound sample (19 and 22, respectively) and an allowable size variation tolerance of 1-inch (25.4 mm). In addition, this proposed rule would amend the size designation "18 or larger" to read "18" and would increase the allowable size variation tolerance for that size designation from 1/2-inch (12.7 mm) to 1-inch (25.4 mm). Further, this proposed rule would amend the definition for Size 45 by increasing the maximum number of fruit per 8-pound sample from 55 to 56 and increasing the size variation tolerance from 1/4-inch (6.4 mm) to 3/8-inch (9.5 mm).

This proposed rule would also relax the Order's minimum size requirement for all kiwifruit varieties, other than varieties of the *Actinidia chinensis* species. The current minimum size under the size requirements is Size 45, which is defined as a maximum of 55

pieces of fruit per 8-pound sample. This proposed rule would increase the maximum number of pieces of fruit per 8-pound sample from 55 to 56. As is required by section 8e of the Act, this proposed rule would also make a corresponding change to the minimum size requirement in the kiwifruit import regulation for non-*Actinidia chinensis* species varieties consistent with §§ 920.52 and 920.53 of the Order.

This proposed rule would not impose any additional costs to industry. If implemented, the changes to the handling regulations are expected to make the inspection and handling of kiwifruit more efficient. Further, the quality of fruit to consumers is not expected to be significantly affected, as modifying the allowable pack and size requirements would not impact the Order's minimum quality requirements.

The Committee considered alternatives to the recommended changes, including taking no action and continuing to regulate according to the requirements as currently established. As discussed by the Committee, handlers currently may define their own size designations for fruit that are larger than Size 18 (e.g., Size 17, 16, 15, 14, 13, etc.). The Committee considered the various optional size designations and the merits of each. Ultimately, the Committee determined that the addition of two larger size designations under the pack requirements, along with the other minor changes to the Order's size and pack requirements proposed herein, was in the best interests of the growers, handlers, and consumers of California kiwifruit and rejected all other alternatives.

Committee meetings are widely publicized throughout the California kiwifruit industry. All interested persons are invited to attend meetings and participate in Committee deliberations. Like all Committee meetings, the April 9, 2024, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Fruit Crops. This proposed rule does not require changes to the current information collection. Should any

changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges, Plums, Prunes.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR parts 920 and 944 as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

- 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

- 2. Amend § 920.302 by removing in paragraph (a)(2) the text "55 pieces" and adding in its place the text "56 pieces", and by revising table 1 to paragraph (a)(4)(ii)(A) to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) * * *

(ii) * * *

(A) * * *

TABLE 1 TO PARAGRAPH (a)(4)(ii)(A)—SIZE DESIGNATION AND SIZE VARIATION CHART

Size designation	Maximum number of fruit per 8-pound sample	Size variation tolerance (diameter) ¹
12 or larger	19	1-inch (25.4 mm).
15	22	1-inch (25.4 mm).
18	25	1-inch (25.4 mm).
20	27	½-inch (12.7 mm).
23	30	½-inch (12.7 mm).
25	32	½-inch (12.7 mm).
27/28	35	½-inch (12.7 mm).
30	39	½-inch (12.7 mm).
33	43	⅜-inch (9.5 mm).
36	46	⅜-inch (9.5 mm).
39	49	⅜-inch (9.5 mm).
42	53	⅜-inch (9.5 mm).
45	56	⅜-inch (9.5 mm).
49 ²	64	Not applicable.

¹ Not applicable to *Actinidia chinensis* species varieties.² Applicable only to *Actinidia chinensis* species varieties.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 944.550 [Amended]

■ 4. Amend § 944.550(a) by removing the text “55 pieces” and adding in its place the text “56 pieces”.

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–02372 Filed 2–5–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2026–0738; Project Identifier MCAI–2025–01039–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–22–05, which applies to certain Dassault Aviation Model FAN JET FALCON and FAN JET FALCON

SERIES C, D, E, F, and G airplanes. AD 2023–22–05 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023–22–05, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2023–22–05 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 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–2026–0738; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2026–0738.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT:

Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA–2026–0738; Project Identifier MCAI–2025–01039–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the

reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued 2023-22-05, Amendment 39-22589 (88 FR 80570, November 20, 2023) (AD 2023-22-05), for certain Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2023-22-05 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2023-0060, dated March 16, 2023 (EASA AD 2023-0060) (which corresponds to FAA AD 2023-22-05), to correct an unsafe condition.

AD 2023-22-05 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023-

22-05 to address, among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

Actions Since AD 2023-22-05 Was Issued

Since the FAA issued AD 2023-22-05, EASA superseded AD 2023-0060 and issued EASA AD 2025-0125, dated May 28, 2025; corrected June 3, 2025 (EASA AD 2025-0125) (also referred to as the MCAI), for certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2026-0738.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025-0125. This material specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2023-0060, dated March 16, 2023, which the Director of the Federal Register approved for incorporation by reference as of December 26, 2023 (88 FR 80570, November 20, 2023).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2023-22-05.

This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2025-0125 already described, as proposed for incorporation by reference. Any differences with EASA AD 2025-0125 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the Incorporation by Reference (IBR) of EASA AD 2023-0060 and incorporate EASA AD 2025-0125 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023-0060 and EASA AD 2025-0125 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023-0060 or EASA AD 2025-0125 does not mean that operators need to comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this proposed AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2023-0060 or EASA AD 2025-0125. Material required by EASA AD 2023-0060 and EASA AD 2025-0125 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA-2026-0738 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under "Additional AD Provisions." This new format includes a "New Provisions for Alternative Actions and Intervals" paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–22–05 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

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:

- a. Removing Airworthiness Directive (AD) AD 2023–22–05, Amendment 39–22589 (88 FR 80570, November 20, 2023); and
- b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2026–0738; Project Identifier MCAI–2025–01039–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 23, 2026.

(b) Affected ADs

This AD replaces AD 2023–22–05, Amendment 39–22589 (88 FR 80570, November 20, 2023) (AD 2023–22–05).

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2025–0125, dated May 28, 2025; corrected June 3, 2025 (EASA AD 2025–0125).

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (j) of AD 2023–22–05, with a new terminating action. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0060, dated March 16, 2023 (EASA AD 2023–0060). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2023–0060, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–22–05, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0060.

(2) Paragraph (3) of EASA AD 2023–0060 specifies revising "the approved AMP" within 12 months after its effective date, but

this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after December 26, 2023 (the effective date of AD 2023–22–05).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0060 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0060, or within 90 days after December 26, 2023 (the effective date of AD 2023–22–05), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0060.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0060.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2023–22–05, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0060.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2025–0125. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2025–0125

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2025–0125.

(2) Paragraph (3) of EASA AD 2025–0125 specifies revising “the approved AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2025–0125 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2025–0125, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2025–0125.

(5) This AD does not adopt the “Remarks” section of EASA AD 2025–0125.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless the actions and intervals are approved as specified in the

provisions of the “Ref. Publications” section of EASA AD 2025–0125.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *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 responsible Flight Standards 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 (n) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

(o) 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 this AD specifies otherwise.

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2025–0125, dated May 28, 2025; corrected June 3, 2025.

(ii) [Reserved]

(4) The following material was approved for IBR on December 26, 2023 (88 FR 80570, November 20, 2023).

(i) EASA AD 2023–0060, dated March 16, 2023.

(ii) [Reserved]

(5) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(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 28, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–02417 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–0739; Project Identifier MCAI–2025–01040–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–20–05, which applies to certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. AD 2023–20–05 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023–20–05, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2023–20–05 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 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 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* under Docket No. FAA–2026–0739; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu*. It is also available at *regulations.gov* under Docket No. FAA–2026–0739.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA–2026–0739; Project Identifier MCAI–2025–01040–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and

actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: *9-AVS-AIR-BACO-COS@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–20–05, Amendment 39–22564 (88 FR 68454, October 4, 2023) (AD 2023–20–05), for certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. AD 2023–20–05 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2023–0062, dated March 20, 2023 (EASA AD 2023–0062) (which corresponds to FAA AD 2023–20–05), to correct an unsafe condition.

AD 2023–20–05 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2023–20–05 to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

Actions Since AD 2023–20–05 Was Issued

Since the FAA issued AD 2023–20–05, EASA superseded AD 2023–0062 and issued EASA AD 2025–0126, dated May 28, 2025 (EASA AD 2025–0126) (also referred to as the MCAI), for certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address fatigue cracking, damage, and

corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–0739.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0126. This material specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2023–0062, dated March 20, 2023, which the Director of the Federal Register approved for incorporation by reference as of November 8, 2023 (88 FR 68454, October 4, 2023).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all requirements of AD 2023–20–05. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2025–0126 already described, as proposed for incorporation by reference. Any differences with EASA AD 2025–0126 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator

must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the Incorporation by Reference (IBR) of EASA AD 2023–0062 and incorporate EASA AD 2025–0126 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0062 and EASA AD 2025–0126 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0062 or EASA AD 2025–0126 does not mean that operators need to comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this proposed AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2023–0062 or EASA AD 2025–0126. Material required by EASA AD 2023–0062 and EASA AD 2025–0126 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2026–0739 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in

the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under “Additional AD Provisions.” This new format includes a “New Provisions for Alternative Actions and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 61 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–20–05 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

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:

■ a. Removing Airworthiness Directive (AD) 2023–20–05, Amendment 39–22564 (88 FR 68454, October 4, 2023); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2026–0739; Project Identifier MCAI–2025–01040–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 23, 2026.

(b) Affected ADs

This AD replaces AD 2023–20–05, Amendment 39–22564 (88 FR 68454, October 4, 2023) (AD 2023–20–05).

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD

2025–0126, dated May 28, 2025 (EASA AD 2025–0126).

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (i) of AD 2023–20–05, with a new terminating action. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0062, dated March 20, 2023 (EASA AD 2023–0062). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2023–0062, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2023–20–05, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0062.

(2) Paragraph (3) of EASA AD 2023–0062 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after November 8, 2023 (the effective date of AD 2023–20–05).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0062 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0062, or within 90 days after November 8, 2023 (the effective date of AD 2023–20–05), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0062.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0062.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2023–20–05, with a new

exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0062.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2025–0126. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2025–0126

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2025–0126.

(2) Paragraph (3) of EASA AD 2025–0126 specifies revising “the approved AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2025–0126 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2025–0126, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2025–0126.

(5) This AD does not adopt the “Remarks” section of EASA AD 2025–0126.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless the actions and intervals are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2025–0126.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *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 responsible Flight Standards 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 (n) of this AD and

email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

(o) 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 this AD specifies otherwise.

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2025–0126, dated May 28, 2025.

(ii) [Reserved]

(4) The following material was approved for IBR on November 8, 2023 (88 FR 68454, October 4, 2023).

(i) EASA AD 2023–0062, dated March 20, 2023.

(ii) [Reserved]

(5) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 February 2, 2026.

Steven W. Thompson,
Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2026–02418 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2026–0737; Project Identifier MCAI–2025–01038–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–22–10, which applies to certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2023–22–10 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023–22–10, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2023–22–10 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 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–2026–0737; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and

other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0737.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT:

Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA–2026–0737; Project Identifier MCAI–2025–01038–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important

that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: 9-AVS-AIR-BACO-COS@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–22–10, Amendment 39–22594 (88 FR 80567, November 20, 2023) (AD 2023–22–10), for certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. AD 2023–22–10 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2023–0059, dated March 16, 2023 (EASA AD 2023–0059) (which corresponds to FAA AD 2023–22–10), to correct an unsafe condition.

AD 2023–22–10 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023–22–10 to address, among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

Actions Since AD 2023–22–10 Was Issued

Since the FAA issued AD 2023–22–10, EASA superseded AD 2023–0059 and issued EASA AD 2025–0124, dated May 28, 2025 (EASA AD 2025–0124) (also referred to as the MCAI), for certain Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0737.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0124. This material specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2023–0059, dated March 16, 2023, which the Director of the Federal Register approved for incorporation by reference as of December 26, 2023 (88 FR 80567, November 20, 2023).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2023–22–10. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2025–0124 already described, as proposed for incorporation by reference. Any differences with EASA AD 2025–0124 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the Incorporation by Reference (IBR) of EASA AD 2023–0059 and incorporate EASA AD 2025–0124 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0059 and EASA AD 2025–0124 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0059 or EASA AD 2025–0124 does not mean that operators need to comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this proposed AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2023–0059 and EASA AD 2025–0124. Material required by EASA AD 2025–0124 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2026–0737 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under "Additional AD Provisions." This new format includes a "New Provisions for Alternative Actions and Intervals" paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 32 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–22–10 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

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:
 - a. Removing Airworthiness Directive (AD) 2023–22–10, Amendment 39–22594 (88 FR 80567, November 20, 2023); and
 - b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2026–0737; Project Identifier MCAI–2025–01038–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 23, 2026.

(b) Affected ADs

This AD replaces AD 2023–22–10, Amendment 39–22594 (88 FR 80567, November 20, 2023) (AD 2023–22–10).

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, FAN JET FALCON SERIES C, D, E, F, and G airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2025–0124, dated May 28, 2025 (EASA AD 2025–0124).

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (i) of AD 2023–22–10, with a new terminating action. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0059, dated March 16, 2023 (EASA AD 2023–0059). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2023–0059, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2023–22–10, with no changes.

- (1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0059.
- (2) Paragraph (3) of EASA AD 2023–0059 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after December 26, 2023 (the effective date of AD 2023–22–10).
- (3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0059 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0059, or within 90 days after December 26, 2023 (the effective date of AD 2023–22–10), whichever occurs later.
- (4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0059.
- (5) This AD does not adopt the “Remarks” section of EASA AD 2023–0059.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2023–22–10, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are

approved as approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2023–0059.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2025–0124, dated May 28, 2025 (EASA AD 2025–0124). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2025–0124

- (1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2025–0124.
- (2) Paragraph (3) of EASA AD 2025–0124 specifies revising “the approved AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.
- (3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2025–0124 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2025–0124, or within 90 days after the effective date of this AD, whichever occurs later.
- (4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2025–0124.
- (5) This AD does not adopt the “Remarks” section of EASA AD 2025–0124.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless the actions and intervals are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2025–0124.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *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 responsible Flight Standards 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 (n) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation

Branch, FAA; or EASA; or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

(o) 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 this AD specifies otherwise.

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2025-0124, dated May 28, 2025.

(ii) [Reserved]

(4) The following material was approved for IBR on December 26, 2023 (88 FR 80567, November 20, 2023).

(i) EASA AD 2023-0059, dated March 16, 2023.

(ii) [Reserved]

(5) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

(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 28, 2026.

Steven W. Thompson,

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

[FR Doc. 2026-02416 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-0742; Project Identifier MCAI-2025-01337-E]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023-26-04, which applies to all Rolls-Royce Deutschland Ltd & Co KG (RRD) Model Trent 1000-AE3, Trent 1000-CE3, Trent 1000-D3, Trent 1000-G3, Trent 1000-H3, Trent 1000-J3, Trent 1000-K3, Trent 1000-L3, Trent 1000-M3, Trent 1000-N3, Trent 1000-P3, Trent 1000-Q3, and Trent 1000-R3 engines. AD 2023-26-04 requires initial and repetitive in-shop visual inspections of the intermediate-pressure stage 8 (IP8) and high-pressure stage 3 (HP3) air transfer tubes and front bearing housing IP8 air feed tubes for cracking, damage, or air leakage wear, and replacement, if necessary. Since the FAA issued AD 2023-26-04, the FAA has determined that a new set of initial and repetitive on-wing visual inspections of the IP8 and HP3 air transfer tubes for cracking, damage, or air leakage wear are necessary, and consequently the inspection interval for the repetitive in-shop visual inspections of front bearing housing IP8 air feed tubes may be increased. This proposed AD would continue to require initial and repetitive in-shop visual inspections of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes (with increased inspection interval) for cracking, damage, or air leakage wear, and replacement, if necessary. This proposed AD would also require initial and repetitive on-wing visual inspections of the IP8 and HP3 air transfer tubes for cracking, damage, or air leakage wear, and replacement, if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by March 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-2026-0742; or in person at

Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI) any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

FOR FURTHER INFORMATION CONTACT:

Alexis Whitaker, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: (516) 228-7309; email: alexis.j.whitaker@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-2026-0742; Project Identifier MCAI-2025-01337-E" at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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 Alexis Whitaker, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–26–04, Amendment 39–22647 (89 FR 251, January 3, 2024) (AD 2023–26–04), for all RRD Model Trent 1000–AE3, Trent 1000–CE3, Trent 1000–D3, Trent 1000–G3, Trent 1000–H3, Trent 1000–J3, Trent 1000–K3, Trent 1000–L3, Trent 1000–M3, Trent 1000–N3, Trent 1000–P3, Trent 1000–Q3, and Trent 1000–R3 engines. AD 2023–26–04 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2023–0087, dated April 26, 2023 (EASA AD 2023–0087) to correct an unsafe condition identified as a determination that certain intervals for visual inspection of the IP8 air transfer tubes, HP3 air transfer tubes, and front bearing housing IP8 air feed tubes need to be reduced. EASA AD 2023–0087 stated that the RRD engine time limits manual (TLM) provides instructions for visual inspection of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes for cracking, damage, or air leakage wear at intervals consistent with critical part life assessments. Also, certain inspection intervals mandated by the MCAI, and not previously included in the TLM, are shorter than the engine shop visit intervals. Thus, more frequent visual inspections of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes are necessary. The manufacturer issued service information

that provides instructions for (in-shop) visual inspections of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes.

AD 2023–26–04 requires initial and repetitive in-shop visual inspections of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes for cracking, damage, or air leakage wear, and replacement, if necessary. The FAA issued AD 2023–26–04 to prevent failure of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes.

Actions Since AD 2023–26–04 Was Issued

Since the FAA issued AD 2023–26–04, EASA superseded EASA AD 2023–0087 and issued EASA AD 2025–0176, dated August 7, 2025 (EASA AD 2025–0176) (also referred to as the MCAI). The MCAI states that since EASA AD 2023–0087 was published, the manufacturer has issued service information to include initial and repetitive on-wing visual inspections of the IP8 and HP3 air transfer tubes, and an increase to the interval for the in-shop visual inspections of front bearing housing IP8 air feed tubes.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0742.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0176, which specifies procedures for performing initial and repetitive on-wing and in-shop visual inspections of the IP8 and HP3 air transfer tubes and front bearing housing IP8 air feed tubes for cracking, damage, or air leakage wear, and replacement if necessary.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA’s Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI

referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop 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 2023–26–04. This proposed AD would require accomplishing the actions specified in the MCAI described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and CAAs to use this process. As a result, EASA AD 2025–0176 will be incorporated by reference in the final rule. This AD, therefore, requires compliance with EASA AD 2025–0176 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2025–0176 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 2025–0176. Service information required by EASA AD 2025–0176 for compliance will be available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0742.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect four engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
On-wing inspection of air tubes	4 work-hours × \$85 per hour = \$340	\$0	\$340	\$1,360
In-shop inspection of air tubes	4 work-hours × \$85 per hour = \$340	0	340	1,360

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

results of the proposed inspection. The agency has no way of determining the

number of engines that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace IP8 air transfer tubes	2 work-hours × \$85 per hour = \$170	\$7,600	\$7,770
Replace HP3 air transfer tubes	2 work-hours × \$85 per hour = \$170	11,900	12,070
Replace front bearing housing IP8 air feed tubes	2 work-hours × \$85 per hour = \$170	10,000	10,170

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 2023–26–04, Amendment 39–22647 (89 FR 251, January 3, 2024); and
- b. Adding the following new airworthiness directive:

Rolls-Royce Deutschland Ltd & Co KG:
Docket No. FAA–2026–0742; Project Identifier MCAI–2025–01337–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 23, 2026.

(b) Affected ADs

This AD replaces AD 2023–26–04, Amendment 39–22647 (89 FR 251, January 3, 2024).

(c) Applicability

This AD applies to all Rolls-Royce Deutschland Ltd & Co KG Model Trent 1000-AE3, Trent 1000-CE3, Trent 1000-D3, Trent 1000-G3, Trent 1000-H3, Trent 1000-J3, Trent 1000-K3, Trent 1000-L3, Trent 1000-M3, Trent 1000-N3, Trent 1000-P3, Trent 1000-Q3, and Trent 1000-R3 engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7500, Engine Bleed Air System.

(e) Unsafe Condition

This AD was prompted by a determination that a new set of on-wing initial and repetitive visual inspections of the intermediate-pressure stage 8 (IP8) and high-pressure stage 3 (HP3) air transfer tubes for cracking, damage, or air leakage wear are necessary, and consequently the inspection interval for the repetitive in-shop visual inspections of the front bearing housing IP8 air feed tubes may be increased. The FAA is issuing this AD to prevent failure of the IP8

and HP3 air transfer tubes and front bearing housing IP8 air feed tubes. The unsafe condition, if not addressed, could affect the engine internal cooling and sealing flows, resulting in failure of the IP8 air transfer tubes, HP3 air transfer tubes, and front bearing housing IP8 air feed tubes, with consequent damage to the engine and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0176, dated August 7, 2025 (EASA AD 2025–0176).

(h) Exceptions to EASA AD 2025–0176

(1) Where EASA AD 2025–0176 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the "Remarks" section of EASA AD 2025–0176.

(i) No Reporting Requirement

Although the service material referenced in EASA AD 2025–0176 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520 Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the Manager, AIR–520 Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (k) of this AD and email to: AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

For more information about this AD, contact Alexis Whitaker, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des

Moines, WA 98198; phone: (516) 228-7309; email: alexis.j.whitaker@faa.gov.

(I) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2025-0176, dated August 7, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222-5110.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on January 30, 2026.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026-02366 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2026-0740; Project Identifier MCAI-2025-01037-T]

RIN 2120-AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023-18-07, which applies to certain Dassault Aviation Model MYSTERE-FALCON 20-C5, 20-D5, 20-E5, and 20-F5 airplanes. AD 2023-18-07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023-18-07, the FAA has determined that new or more

restrictive airworthiness limitations are necessary. This proposed AD would continue to require certain actions in AD 2023-18-07 and would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 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-2026-0740; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at regulations.gov under Docket No. FAA-2026-0740.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

FOR FURTHER INFORMATION CONTACT:

Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or

arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA-2026-0740; Project Identifier MCAI-2025-01037-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781-238-7693; email: 9-AVS-AIR-BACO-COS@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023-18-07, Amendment 39-22548 (88 FR 66681, September 28, 2023) (AD 2023-18-07), for certain Dassault Aviation Model MYSTERE-FALCON 20-C5, 20-D5, 20-E5, and 20-F5 airplanes. AD 2023-18-07 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2023-0058, dated March 16, 2023 (EASA 2023-0058) (which corresponds to FAA AD

2023–18–07), to correct an unsafe condition.

AD 2023–18–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. The FAA issued AD 2023–18–07 to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

Actions Since AD 2023–18–07 Was Issued

Since the FAA issued AD 2023–18–07, EASA superseded AD 2023–0058 and issued EASA AD 2025–0123, dated May 28, 2025 (EASA AD 2025–0123) (also referred to as the MCAI), for certain Dassault Aviation Model MYSTERE–FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

The FAA is proposing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–0740.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0123. This material specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2023–0058, dated March 16, 2023, which the Director of the Federal Register approved for incorporation by reference as of November 2, 2023 (88 FR 66681, September 28, 2023).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop

in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2023–18–07. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2025–0123 already described, as proposed for incorporation by reference. Any differences with EASA AD 2025–0123 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the Incorporation by Reference (IBR) of EASA AD 2023–0058 and incorporate EASA AD 2025–0123 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0058 and EASA AD 2025–0123 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0058 or EASA AD 2025–0123 does not mean that operators need to comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this proposed AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2023–0058 or EASA AD

2025–0123. Material required by EASA AD 2023–0058 and EASA AD 2025–0123 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2026–0740 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under “Additional AD Provisions.” This new format includes a “New Provisions for Alternative Actions and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 61 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–18–07 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has

determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

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:

■ a. Removing Airworthiness Directive (AD) 2023–18–07, Amendment 39–22548 (88 FR 66681, September 28, 2023); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2026–0740; Project Identifier MCAI–2025–01037–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 23, 2026.

(b) Affected ADs

This AD replaces AD 2023–18–07, Amendment 39–22548 (88 FR 66681, September 28, 2023) (AD 2023–18–07).

(c) Applicability

This AD applies to Dassault Aviation Model MYSTERE-FALCON 20–C5, 20–D5, 20–E5, and 20–F5 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2025–0123, dated May 28, 2025 (EASA AD 2025–0123).

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With a New Terminating Action

This paragraph restates the requirements of paragraph (i) of AD 2023–18–07, with a new terminating action. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0058, dated March 16, 2023 (EASA AD 2023–0058). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2023–0058, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2023–18–07, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0058.

(2) Paragraph (3) of EASA AD 2023–0058 specifies revising "the approved AMP" within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after November 2, 2023 (the effective date of AD 2023–18–07).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0058 is at the applicable "limitations" as incorporated by the requirements of paragraph (3) of EASA AD 2023–0058, or within 90 days after November 2, 2023 (the effective date of AD 2023–18–07), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0058.

(5) This AD does not adopt the "Remarks" section of EASA AD 2023–0058.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2023–18–07, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2023–0058.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2025–0123. Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2025–0123

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2025–0123.

(2) Paragraph (3) of EASA AD 2025–0123 specifies revising "the approved AMP," within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2025–0123 is at the applicable "limitations" as incorporated by the requirements of paragraph (3) of EASA AD 2025–0123, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2025–0123.

(5) This AD does not adopt the “Remarks” section of EASA AD 2025–0123.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless the actions and intervals are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2025–0123.

(m) Additional AD Provisions

The following provisions also apply to this AD:

(1) *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 responsible Flight Standards 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 (n) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Kimi Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 781–238–7693; email: 9-AVS-AIR-BACO-COS@faa.gov.

(o) 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 this AD specifies otherwise.

(3) The following material was approved for IBR on [Date 35 Days After Publication of the Final Rule].

(i) European Union Aviation Safety Agency (EASA) AD 2025–0123, dated May 28, 2025.

(ii) [Reserved]

(4) The following material was approved for IBR on November 2, 2023 (88 FR 66681, September 28, 2023).

(i) EASA AD 2023–0058, dated March 16, 2023.

(ii) [Reserved]

(5) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You

may find this material on the EASA website at ad.easa.europa.eu.

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(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 29, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–02419 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. **FAA–2026–0741**; Project Identifier **AD–2025–00817–T**]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. This proposed AD was prompted by a report of corrosion found on a satellite communications (SATCOM) high gain antenna adapter plate. This proposed AD would require repetitive inspections for corrosion of the SATCOM high gain antenna adapter plate and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 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–2026–0741**; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Boeing material identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at regulations.gov under Docket No. **FAA–2026–0741**.

FOR FURTHER INFORMATION CONTACT:

Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: stefanie.n.roesli@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. **FAA–2026–0741**; Project Identifier **AD–2025–00817–T**” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: stefanie.n.roesli@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that during a heavy maintenance check on a Model 767 airplane, corrosion was found on a certain SATCOM high gain antenna adapter plate. The most severe corrosion was found at the nutplates around the edge of the adapter plate; the nutplates are used to fasten the antenna assembly

to the adapter plate. Corrosion was also found at the adapter plate mounting lugs and the area around the bonding strap that is connected between the adapter plate and the airplane skin. Contributing factors that lead to an increase in risk of a parts departing airplane (PDA) event include a lack of nutplate or nutplate recess corrosion protection, lack of instructions for re-application of primer and paint, lack of maintenance inspections and repair procedures, and moisture protection appears to be inadequate for the environment. Undetected corrosion of the adapter plate could lead to a PDA event. A PDA event of the SATCOM high gain antenna adapter system could damage the primary flight control surfaces, which could result in loss of continued safe flight and landing.

The SATCOM high gain antenna for Model 777 airplane has a similar adapter plate to the one installed on Model 767 airplanes. In related rulemaking, the FAA issued an NPRM, Docket No. FAA–2025–0741 (90 FR 17741), to address the unsafe condition on Model 767 airplanes.

FAA’s Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 777–23A0454

RB, dated May 16, 2025. This material specifies procedures for repetitive detailed inspections for corrosion of the SATCOM high gain antenna adapter plate and applicable on-condition actions. On-condition actions include repairing the SATCOM high gain antenna adapter plate or replacing it with a new or serviceable SATCOM high gain antenna adapter plate if any corrosion found is less than or equal to 0.005 inch in depth; and replacing the SATCOM high gain antenna adapter plate with a new or serviceable SATCOM high gain antenna adapter plate if any corrosion found is greater than 0.005 inch in depth. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this material at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2026–0741.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 238 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection	11 work-hours × \$85 per hour = \$935 per inspection cycle.	None	\$935 per inspection cycle	\$222,530 per inspection cycle.

The FAA estimates the following costs to do any necessary repairs or replacements that would be required

based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that

might need these repairs or replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair of adapter plate	5 work-hours × \$85 per hour = \$425	Negligible	\$425
Replacement of adapter plate	2 work-hour × \$85 per hour = \$170	\$18,000	18,170

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in

Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

The Boeing Company: Docket No. FAA–2026–0741; Project Identifier AD–2025–00817–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 23, 2026.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 23, Communications.

(e) Unsafe Condition

This AD was prompted by a report of corrosion found on a satellite communications (SATCOM) high gain antenna adapter plate. The FAA is issuing this AD to address corrosion of the adapter plate, which could lead to a part departing airplane (PDA). A PDA event of the SATCOM high gain antenna adapter system could damage the primary flight control surfaces, which could result in loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 777–23A0454 RB, dated May 16, 2025, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 777–23A0454 RB, dated May 16, 2025.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 777–23A0454, dated May 16, 2025, which is referred to in Boeing Alert Requirements Bulletin 777–23A0454 RB, dated May 16, 2025.

(h) Exception to Requirements Bulletin Specifications

Where the Condition and Boeing Recommended Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 777–23A0454 RB, dated May 16, 2025, refer to the original issue date of Requirements Bulletin 777–23A0454 RB, this AD requires using the effective date of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the Continued Operational Safety Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR–520, Continued Operational

Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: stefanie.n.roesli@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 777–23A0454 RB, dated May 16, 2025.

(ii) [Reserved]

(3) For Boeing material identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website myboeingfleet.com.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on January 29, 2026.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2026–02420 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

RIN 3038–AF14

Event Contracts; Withdrawal of Proposed Regulatory Action

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of withdrawal of proposed rules.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is formally withdrawing a notice of proposed rulemaking published on June 10, 2024, titled “Event Contracts.” The Commission does not intend to issue final rules with

respect to this proposal. If the Commission decides to pursue future regulatory action in this area, it will issue new proposed rules.

DATES: The Commission is withdrawing the proposed rules published at 89 FR 48968 (June 10, 2024) as of February 4, 2026.

FOR FURTHER INFORMATION CONTACT: Frank Fisanich, Acting Director, (202) 418–5949, ffisanich@cftc.gov, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2024, the Commission published a notice of proposed rulemaking in the **Federal Register** proposing amendments to its rules concerning event contracts in certain excluded commodities. Specifically, the Commission proposed amendments to further specify types of event contracts that fall within the scope of section 5c(c)(5)(C) of the Commodity Exchange Act (“CEA”) ¹ and are contrary to the public interest, such that they may not be listed for trading or accepted for clearing on or through a CFTC-registered entity. Among other things, the Commission proposed to further specify the types of event contracts that involve “gaming.”

Withdrawal of Proposed Rules

The Commission is withdrawing these proposed rules to reconsider them in light of various forms of state regulatory actions and litigation concerning the Commission’s exclusive jurisdiction over event contract derivatives listed on designated contract markets and the proper application of the swap and excluded commodity definitions under the Commodity Exchange Act, including issues related to the preemption of state gambling, wagering, and gaming laws in relation to sports-related event contracts laws and what activities constitute “gaming” under the CEA.² Thus, the Commission no longer intends to issue final rules with respect to the proposal. If the Commission decides to pursue

future regulatory action in this area, it will do so by publishing new proposed rules or other issuance consistent with the requirements of the Administrative Procedure Act, as applicable.

Executive Order 12866

The Office of Management and Budget has determined that this action is not a significant regulatory action as defined in Executive Order 12866, as amended, and therefore it was not subject to Executive Order 12866 review.

Issued in Washington, DC, on February 4, 2026, by the Commission.

Christopher Kirkpatrick,
Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Event Contracts; Withdrawal of Proposed Regulatory Action— Commission Voting Summary

On this matter, Chairman Selig voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2026–02454 Filed 2–5–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 218

RIN 0596–AD69

Project-Level Predecisional Administrative Review Process

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Proposed rule; request for public comment.

SUMMARY: The U.S. Department of Agriculture’s Forest Service is proposing to amend its Project-Level Predecisional Administrative Review Process regulations. These regulations establish the process by which the public may file objections seeking administrative review for projects and activities implementing land management plans on national forests. The Forest Service is amending these regulations to consolidate and streamline processes, increase efficiency, and better align with the Agency’s statutory obligations and recent rescissions and revisions to National Environmental Policy Act regulations.

DATES: Comments must be received in writing by March 9, 2026.

ADDRESSES: Comments, identified by RIN 0596–AD69, should be sent via one of the following methods:

- *Electronically (preferred):* through the Federal eRulemaking Portal: <https://www.regulations.gov>; or
- *Mail:* addressed to the Director, Ecosystem Management Coordination, 201 14th Street SW, Mailstop 1108, Washington, DC 20250–1124.

Comments should be confined to issues pertinent to the proposed rule, should explain the reasons for any recommended changes, and should reference the specific section and wording being addressed, where possible. All timely comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. Comments may be viewed on the Federal eRulemaking Portal at <https://www.regulations.gov> by searching for RIN 0596–AD69. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. Please note that comments containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT:

Joshua White, Acting Director, Ecosystem Management Coordination, 202–205–0650. Individuals who are deaf, hard of hearing, or have a speech disability may call 711 to reach the Telecommunications Relay Service and then provide the phone number of the person named as a point of contact for further information.

SUPPLEMENTARY INFORMATION:

I. Background

The Forest Service is proposing to amend the Project-Level Predecisional Administrative Review Process regulations at 36 CFR part 218 (hereinafter 36 CFR 218). The proposed amendments conform to statutory requirements for predecisional administrative review in the Healthy Forests Restoration Act of 2003 (Pub. L. 108–148; 16 U.S.C. 6515), the Consolidated Appropriations Act of 2012, section 428 (Pub. L. 112–74), and the Consolidated Appropriations Act of 2014, section 431 (Pub. L. 113–76). The revised regulations also align the administrative review process with applicable National Environmental Policy Act (NEPA) regulations and simplify and streamline processes to ensure the Forest Service conducts administrative review in a timely and efficient manner.

¹ 17 U.S.C. 7a–2(c)(5)(C).

² See, e.g., *State ex rel. Nevada Gaming Control Board v. Blockratize, Inc. et al.*, Case No. 26–OC–00012 1B (Nev. 1st Jud. Dist. Ct. Jan. 16, 2026); *Coinbase Financial Markets, Inc. v. Raoul, et al.*, No. 1:25–cv–15406 (N.D. Ill. Dec. 18, 2025); *Robinhood Derivatives, LLC v. Dreitzer, et al.*, No. 25–7831 (9th Cir. Dec. 12, 2025); *KalshiEX LLC v. Hendrick, et al.*, No. 25–7516 (9th Cir. Nov. 28, 2025); *N. Am. Deriv. Exch., Inc. v. State of Nevada et al.*, No. 25–7187 (9th Cir. Nov. 14, 2025); *KalshiEX LLC v. Martin*, No. 25–01892 (4th Cir. Aug. 6, 2025); *KalshiEX LLC v. Flaherty*, No. 25–01922 (3d Cir. May 15, 2025).

Certain Forest Service decisions have been subject to an appeal process since 1907 and underwent several changes from that time to the early 1990s. In 1992, Congress enacted the Interior and Related Agencies Appropriation Act of Fiscal Year 1993 (commonly referred to as the “Appeals Reform Act”) (Pub. L. 102–381; 106 Stat. 1419). Section 322 of the Appeals Reform Act required the Forest Service to establish a notice and comment process for proposed actions implementing land management plans and modified the Agency’s existing appeals process. In 2003, in response to the Appeals Reform Act, the Healthy Forests Restoration Act (HFRA) required the Secretary of Agriculture to promulgate “regulations to establish a predecisional administrative review process” to “serve as the sole means by which a person can seek administrative review regarding an authorized hazardous fuel reduction project on Forest Service land.” 16 U.S.C. 6515(a)(1). For hazardous fuel reduction projects conducted under HFRA, the HFRA regulations replaced subsections (c), (d), and (e) of section 322 of the Appeals Reform Act that required a notice, comment, and post-decision administrative appeal process for proposed actions of the Forest Service relating to certain land and resource management projects.

Specifically for projects subject to HFRA, section 105 required the Secretary to create a process whereby eligible parties could participate in a predecisional administrative review process “after the completion of the [relevant project’s] environmental assessment or environmental impact statement” but before “the date of the issuance of the final decision approving the project” (16 U.S.C. 6515(a)(2), (3)).

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act of 2012 (Pub. L. 112–74). Section 428 of the Consolidated Appropriations Act expanded the scope of the HFRA predecisional administrative review process to include projects other than those authorized under HFRA. It requires the Secretary to “apply section 105(a)” of the HFRA, “providing for a predecisional objection process, to proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974” and “documented with a Record of Decision or Decision Notice. . .” *Id.*

The 2012 Consolidated Appropriations Act section 428 also directs that HFRA section 105

predecisional administrative review be applied in lieu of subsections (c), (d), and (e) of section 322 of the Appeals Reform Act. Congress formally repealed the Appeals Reform Act in the 2014 Farm Bill (Pub. L. 113–79 title VIII, subpart A (128 Stat. 913, February 7, 2014) at section 8006).

The 2012 Consolidated Appropriations Act further clarified that, “if the Chief of the Forest Service determines an emergency situation exists for which immediate implementation of a proposed action is necessary, the proposed action shall not be subject to the predecisional objection process, and implementation shall begin immediately after the Forest Service gives notice of the final decision for the proposed action.” *Id.* The Forest Service thereafter amended its Project-Level Predecisional Administrative Review Process regulations in compliance with section 428 on March 27, 2013 (78 FR 18481).

II. Need for Rulemaking

Since these regulations were last amended in 2013, more recent statutory and regulatory actions require the Forest Service to further amend its administrative review process. The Consolidated Appropriations Act of 2014, section 431 (Pub. L. 113–76) exempts projects or activities from the predecisional administrative review process that are categorically excluded from documentation in an environmental assessment or environmental impact statement. The proposed rule adds this provision in section 218.5,

Projects and Activities Not Subject to the Objection Process

On April 11, 2025, the Council for Environmental Quality (CEQ) issued an Interim Final Rule rescinding its NEPA implementing procedures at 40 CFR parts 1500 through 1508. On July 3, 2025, the U.S. Department of Agriculture (USDA) published an Interim Final Rule revising its NEPA regulations at 7 CFR subtitle A part 1b (hereinafter 7 CFR 1b) and rescinding Forest Service NEPA regulations at 36 CFR 220. The 36 CFR 218 administrative review process is inconsistent with applicable NEPA regulations. This proposed rule amending 36 CFR 218 aligns the predecisional administrative review process with the 7 CFR 1b regulations. The Department acknowledges that the final rule for the 7 CFR 1b regulations has not yet been published. To ensure proposed changes align with the final Department NEPA regulations, the effective date for the final rule for

proposed revisions to 36 CFR 218 will occur after the 7 CFR 1b final rule has been published. It is the Department’s intention that these regulations are to be applied in a manner consistent with the applicable NEPA regulations.

In addition to the updates required by statutory and regulatory changes, the Forest Service is proposing other revisions to 36 CFR 218 to provide for a more efficient and effective administrative review process. Experience in implementing the objection process over the last 12 years has demonstrated that reviewing objection issues is time-consuming for both the public and Agency staff, often resulting in lengthy documents and delays. The current comment and objection processes outlined in the regulations add, at a minimum, 120 to 150 days for an EA and FONSI and 135 to 165 days for an EIS and ROD. This does not account for additional time needed for the responsible official to respond to instructions, if any, provided by the objection reviewing officer. Neither HFRA nor the other statutes governing the administrative review process mandate a specific length for the comment or objection periods. The Forest Service has examined the various timeframes associated with the comment and objection periods and proposes reducing them to a more reasonable length to align with recent statutory and regulatory changes to NEPA and avoid delays in project analysis and environmental review, objection response, and project implementation.

The Forest Service has also noted a lack of consistency in its review of objection issues. To increase efficiency and consistency in the review process, the proposed rule would focus the Agency’s objection response on identifying those objections reviewed in whole or in part (meaning some issues were set aside from review), identifying those objections or issues set aside from review and reasons for this, and identifying changes to be made prior to finalizing the finding of no significant impact (FONSI) or record of decision (ROD). The proposed rule also increases consistency by eliminating the process and timeline differences between HFRA and non-HFRA projects. Under the proposed rule, the administrative review process is the same for HFRA and non-HFRA projects, except that there is no emergency authority for HFRA projects. This is because section 428 of the 2012 Consolidated Appropriations Act applies emergency authority only to non-HFRA projects.

The proposed rule would also provide the Forest Service with additional

flexibility in the review process. Proposed revisions would remove a required additional level of review above the responsible official and clarify the authority of the Secretary of Agriculture and the Under Secretary for Natural Resources and Environment.

Other proposed changes to 36 CFR 218 include modernizing the Agency's information exchange methods to rely more consistently on technology generally available to the public and addressing information security. The Forest Service would no longer publish comment and objection notices in a newspaper of record, but would publish notices on the USDA website where other project documents are also published. The Forest Service would also no longer accept facsimile submissions or external media (such as CD-ROMs or external hard drives). Objection responses would no longer be mailed to objectors, as is the current process, although not required by 36 CFR 218. Instead, responses would be published on the USDA website where other associated project documents are also published.

III. Section-by-Section Explanation of the Proposed Rule

This summary describes the proposed amendments for each section, as well as the rationale. Generally, references to rescinded NEPA regulations at 40 CFR parts 1500–1508 and 36 CFR 220 have been removed in all sections. The basic organization of this part has also been modified. Current regulations at 36 CFR 218 are organized into three subparts to clearly delineate the distinct administrative review requirements between HFRA and non-HFRA projects. The administrative review process is the same for HFRA and non-HFRA projects in the proposed rule, with one minor exception, so the three subparts are combined into one part to eliminate redundancy.

218.1 Purpose, Applicability, and Scope

This section combines 218.1, 218.20 and 218.30. Section 218.1, paragraphs (a), (b), and (c) are removed. In this section, reference to HFRA or non-HFRA projects is removed and replaced with a single administrative review process for all qualifying projects and activities implementing land management plans documented with a FONSI or ROD.

218.2 Definitions

Definitions of the following terms are added or amended to align with definitions in NEPA and the applicable NEPA regulations (7 CFR 1b) or to

address terminology used in the proposed rule: *Commenter*, *Contact information*, *Environmental assessment*, *Environmental documents*, *Environmental impact statement*, *Finding of no significant impact*, *Issue*, *Mitigations*, *Objection*, *Proposal (or Project)*, *Project record (or Proposal record)*, *Recommendations*, *Record of decision*, *Scope*, and *Substantive*.

“Address” is removed and included under “Contact information”.

“Authorized hazardous fuel reduction project” is removed, as all projects will now apply the same comment and objection processes.

“Decision notice” is removed because it is replaced with a finding of no significant impact, in alignment with 7 CFR 1b.

“Lead objector” was updated to include *Commenter* in the definition.

“Newspaper(s) of record” is removed along with the requirements to publish legal notices.

“Objection filing period” is removed because this is covered in 218.7.

“Objection process” is removed, as part of the intent of the regulations is to outline this process.

“Objector” was updated to provide clarity on how this status is achieved.

“Responsible official” is updated to align with the definition in the applicable NEPA regulations.

“Specific written comments” was updated to use terminology consistent with 7 CFR 1b (*issue*, *scope*, *substantive*).

218.3 Designated Opportunity for Public Comment

This section is amended to address the designated opportunity for public comment instead of “Reviewing officer” (removed). The role of a reviewing officer is eliminated as it is not statutorily required. As the Agency continues to navigate organizational change and streamline processes, it is more efficient and effective to allow the objection process to remain with the responsible official and interdisciplinary team most familiar with the project or activities that are subject to the objection process. Any reference to “reviewing officer” throughout the regulations has been removed and replaced with “responsible official.”

USDA NEPA regulations at 7 CFR 1b.5 do not require a designated opportunity for public comment for an environmental assessment (EA). In addition, NEPA requires the notice of intent to publish an environmental impact statement (EIS) to include a request for public comment; however, publication of a draft EIS is not required

in 7 CFR 1b. Section 218.3 clarifies that the responsible official would offer an opportunity for public comment for EAs and EISs when subject to the objection process (as now specified in 218.4) to establish eligibility to participate in objections for eligible projects. The designated opportunity for public comment for an EIS may be combined with the request for comment included in the notice of intent to prepare an EIS, as required by NEPA. This section also establishes: the length of the designated opportunity for public comment (timeframes are reduced and apply differently for EAs and EISs to allow for timely environmental reviews as now statutorily required by NEPA for EAs and EISs); minimum information to be provided by the responsible official for comment (to ensure entities and individuals have adequate information to comment on); requirements for providing timely and specific written comments (to allow for more effective review to inform the decision-making process); and the requirement for the responsible official to consider comments (to effectively inform the decision-making process).

The time to file comments for a proposed action to be documented in an EA has been reduced from 30 days to 10 days, and from 45 days to 20 days for a proposed action to be documented in an EIS. These changes correspond with new statutory page limits for EAs and EISs (75 pages for an EA; 150 pages for an EIS, or 300 pages if the proposed Agency action is of extraordinary complexity). With shorter environmental documents, commenters will require less time to review, comment, or object.

The requirement to publish a legal notice in a newspaper of record (or **Federal Register**) for the opportunity to comment is removed, and a requirement is added to publish notice on the USDA website where the EA or EIS (or information associated with these documents) is published. Newspapers are no longer the primary information source for much of the population. Furthermore, many newspapers have gone to reduced publications, with some smaller papers only publishing once a week, every other week, or once a month, and so forth. This is causing unnecessary project delays while waiting for legal notices to be published in the newspaper. Additionally, the cost to publish a legal notice in a newspaper has increased significantly over the last decade, with some larger newspapers charging thousands of dollars to publish one legal notice. This is not a responsible use of taxpayer dollars. Furthermore, there is a large

administrative workload associated with publishing and paying for legal notices. Finally, with rescission of the CEQ NEPA regulations, there is no longer a requirement to file a draft EIS with the Environmental Protection Agency. Therefore, a notice of availability is no longer published in the **Federal Register** for a draft EIS, which was the mechanism previously used to begin the designated opportunity for public comment for an EIS. The requirement to post notice on a USDA website is a more modern, cost-effective, efficient, and consistent way to inform individuals and entities about the opportunity to comment.

This section addresses how the responsible official would review multiple comment submissions from the same individual or entity (to reduce unnecessary administrative workload for Agency personnel and streamline the review process), limits submission to certain formats (to account for security and software policies and modern technology), and provides limited exceptions for including referenced documents and attachments (to reduce unnecessary review of redundant documentation).

218.4 *Projects and Activities Subject to the Objection Process*

This section is amended to specify those projects and activities that are subject to the objection process, as statutorily required, instead of those not subject to the objection process (now moved to 218.5). This section identifies projects and activities implementing land management plans, and proposed project-specific plan amendments to a land management plan included as part of a project or activity, as the actions that are subject to objection. This section also replaces the previous sections 218.22 “*Proposed projects and activities subject to legal notice and opportunity to comment*” and 218.24 “*Notification of opportunity to comment on proposed projects and activities*,” and no longer includes a reference to proposed research activities as a project or activity that is subject to legal notice and opportunity to comment.

218.5 *Projects and Activities Not Subject to the Objection Process*

This section is amended to specify those projects and activities that are not subject to the objection process instead of specifying who may file an objection (now moved to 218.6). This section replaces the previous section 218.23 “*Proposed projects and activities not subject to the objection process*.”

This section is rewritten to clarify when the objection process does not

apply. Projects that receive no timely, substantive written comments have been added to this section. It specifies that the objection process does not apply to FONSI or RODs updated to incorporate changes from the objection process, or to new FONSI or RODs that do not change the Agency’s finding or decision. A reference to projects developed under statutory emergency authorities not subject to objections has been added for clarity, including emergency situations requiring immediate action. An analysis being relied on that has already been through an objection process, a previous Forest Service administrative review process, or another agency’s pre- or post-decisional administrative review process would also not be subject to further review during the objection process. Language has been updated regarding emergency authority projects that would not be subject to objection, as exempted by statute.

218.6 *Who May File an Objection*

This section is amended to specify who may file an objection, which was previously discussed at 218.5. This section replaces the previous section 218.6 “*Computation of time periods*” (moved to 218.3). Discussion of comments received from an authorized representative(s) of an entity has also moved to 218.3. Discussion of objections that list multiple individuals or entities has moved to 218.9. Discussion of how objections would be processed if the objection does not identify a lead objector has moved to 218.11.

218.7 *Objection Filing Period*

This section is amended to specify the filing period for the objection process, which was previously discussed at 218.6. This section replaces the previous section 218.7 “*Giving notice of objection process for proposed projects and activities subject to objection*” (moved to 218.8 and now called “*Notice of opportunity to object*”).

Similar to the designated opportunity for public comment, the objection filing period is different for an EA versus an EIS. The filing period was 45 days for objections filed for a draft decision notice (now FONSI) and draft ROD. The proposed filing period for an objection filed in response to a draft FONSI is now 10 days, and 20 days for an objection filed in response to a draft ROD. Issues raised in objection must be tied to issues previously raised in specific written comments, except for the limited reasons provided, so objectors should not need more time to

submit objections than they needed to submit comments.

Paragraphs (b) and (c) are updated to remove references to legal notice and publication in the **Federal Register**, which are no longer required. Updated language removes paragraph (d), related to extensions, and specifies that objection periods would not be extended (to facilitate timely decision-making and implementation). The objection filing period is updated (timeframes are reduced and apply differently for EAs and EISs to allow for timely environmental reviews and implementation of the project or activities).

218.8 *Notice of Opportunity To Object*

This section is amended to specify the requirements for giving notice of the objection process for projects and activities subject to objection, which was previously discussed at 218.7. This section replaces the previous section 218.8 “*Filing an objection*” (moved to 218.9).

See the discussion above, under 218.3 “*Designated opportunity for public comment*,” regarding the removal of the requirement to publish legal notices in newspapers of record or notice in the **Federal Register** for the opportunity to comment. The same rationale is applied to how notification would be provided for opportunities to object. Notice would be provided on the USDA website where the EA and draft FONSI, or the EIS and draft ROD, are published.

This section also specifies that objection periods would not be extended (to facilitate timely decision-making and implementation).

218.9 *Filing an Objection*

This section is amended to specify the requirements for filing an objection and replaces the previous section 218.8 “*Filing an objection*” (moved to 218.9).

The revised language adds a page limit on the length of objections, with different lengths allotted for objections to an EA (15 pages) or an EIS (30 pages). Page is defined for both attachments and objections submitted via web-based forms. The Fiscal Responsibility Act of 2023 amended NEPA to include page limits for EAs and EISs and convey Congress’s intent that environmental documents not be excessive in length. Limiting the length of objections ensures a more focused and effective objection review process and is not unreasonable now that EAs and EISs must also meet a maximum page limit. Limiting the length of objections also encourages objectors to submit issue-based objections as outlined in the requirements in this section.

Similar to the comment process, this section addresses how the responsible official would review multiple objection submissions from the same individual or entity (to reduce unnecessary administrative workload for Agency personnel and streamline the review process), limits submission to certain formats, and provides limited exceptions for including documents and attachments.

The minimum requirements for filing an objection are defined to ensure that objections are focused and issue-based. This includes demonstrating the connection between prior specific written comments for each issue and providing specific recommended actions for the responsible official to consider for each issue. Limited exceptions are provided for raising issues not tied to previous comments.

218.10 Evidence of Timely Filing

This section is amended to specify the requirements for evidence of timely filing, which was previously discussed at 218.9. This section replaces the previous section 218.10 “*Objections set aside from review*” (moved to 218.11).

This section removes former paragraph (b), (the requirement for the Agency to acknowledge receipt of objections) and addresses only contemporary methods of objection delivery (removes the use of facsimile submissions).

218.11 Objections or Issues Set Aside From Review

This section is amended to specify the reasons objections would be set aside from review, which was previously discussed at 218.10. This section replaces the previous section 218.11 “*Resolution of objections*” (218.11(a) removed and 218.11(b) moved to 218.12).

Language from section 218.10(b) concerning written notice to objectors when an objection is set aside from review has been moved to 218.12 “*Review of objections*”, with notice only provided in the objection response published on a USDA website. This section more clearly defines the elements that would cause an objection to be set aside from review in whole (218.11(a)), or in part when some issues are set aside from review (218.11(b)). The responsible official would be required to set aside objections or issues that meet one or more of the criteria in section 218.11. Additional criteria for setting aside objections in whole include objections that only restate previous comments, objections that, as a whole, refer to the wrong project or activity or national forest, and

submissions received during the objection filing period that are only supportive in nature. To increase the efficiency of the objection review process, the proposed rule adds criteria for setting aside specific issues from review when an objection includes some issues that lack specificity or relevancy but contains other issues that warrant review and response.

The revised language removes “*Meetings*” (previously found at 218.11(a)) because resolution meetings are not statutorily required as part of the objection process and created additional administrative burdens and unnecessary delays; however, this does not preclude a responsible official from holding public hearings, public meetings, or other opportunities for public involvement (in alignment with 7 CFR 1b.9(k)) as deemed useful to inform the decision-making process.

218.12 Review of Objections

This section is amended to specify the requirements for reviewing objections. This section replaces the previous section 218.12 “*Timing of project decision*” (moved to 218.13).

This section updates language previously in 218.11(b) regarding the reviewing officer’s (now responsible official’s) response to objections. The proposed rule would establish a reduced response deadline after the end of the objection filing period, with no opportunity to extend the response period (to ensure efficient progress towards project implementation). The response timeline was 45 days for objections filed on both draft FONSI and draft RODs, with the option to extend the response period by 30 days. The proposed response period would differ for EAs (15 days) and EISs (20 days). The response would be limited to five pages and state: the objections reviewed in whole or in part (in part if some issues were set aside from review), objections or issues set aside from review (if any), and reasons for this, and/or changes (if any) the responsible official will make before publishing the final FONSI or ROD. Defining the requirements for responding to objections would ensure a timely response to objectors that focuses on clarifying those objections that were reviewed in whole or in part and appropriately highlights changes made in response to the objections and issues reviewed.

To increase consistency with the Agency’s distribution of other project-related documents, this section clarifies that publication of the responsible official’s response on a USDA website would be the sole requirement for

distributing the objection response. This section also retains the language that no further review of the responsible official’s written response to an objection is available from any USDA official.

218.13 Timing of Finding or Decision

This section is amended to specify the requirements for publishing the final FONSI or ROD. This section replaces the previous section 218.13 “*Secretary’s authority*” (moved to 218.15).

This section updates requirements previously found at 218.12 “*Timing of project decision*.” It adds language for promptly finalizing the FONSI or ROD after any changes included in the objection response are completed. It removes the requirement for the reviewing officer to notify the responsible official, as the responsible official would be the line officer completing the review. Additionally, it removes references to a decision notice (DN) and rescinded NEPA regulations. It adds notification requirements (publication of the final FONSI or ROD to a USDA website) for various scenarios to align with 7 CFR 1b.

218.14 Emergency Situations

This section is amended to specify how the procedures set forth in these regulations would apply to emergency situations requiring immediate actions, as determined by the Chief or Associate Chief. This section replaces the previous section 218.14 “*Judicial proceedings*” (moved to 218.16).

218.15 Secretary and Undersecretary Authority

This section is amended to specify how the procedures set forth in these regulations would apply to the authority of the Secretary and the Under Secretary. This section replaces the previous section 218.15 “*Information collection requirements*” (removed).

This section retains the authority of the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment (NRE). The phrase “projects and activities proposed by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment” is updated to remove the word “proposed” and clarifies that projects and activities finalized, authorized, or approved by the Secretary of Agriculture or the Under Secretary for NRE are not subject to the procedures set forth in this part. This provides necessary flexibility for projects or activities initially proposed by the Forest Service, for which the Secretary or the Under Secretary chooses to retain the decision authority

to authorize or approve the projects or activities.

218.16 *Judicial Proceedings*

This section is amended to specify judicial proceedings. This section replaces the previous section 218.16 “Effective dates” (removed).

Paragraph (a) is deleted to remove extraneous information not related to judicial proceedings, and paragraph (b) is retained.

218.17 *Severability*

This is a new section added to clarify that the sections of these regulations are separate and severable from one another. It describes how other sections or portions may remain valid if another section or portion is stayed or determined to be invalid.

IV. Transition

It is anticipated that a final rule amending the objection process at 36 CFR 218 will be published and made effective within a reasonable time after publication of this proposed rule. The following transition guidelines will apply to projects already underway on the effective date of the final rule.

When a proposed action that is subject to 36 CFR 218 has already provided a designated opportunity for public comment prior to the publication of this proposed rule, the objection process as it was established prior to the proposed rule will apply.

Projects subject to 36 CFR 218 that initiate the designated opportunity for public comment after the publication of this proposed rule may include a statement in the notice for opportunity to comment that the FONSI or ROD may be subject to the revised objection process if the final 36 CFR 218 rule is published before the project’s objection period.

When a proposed action that is subject to 36 CFR 218 has not initiated a designated opportunity for public comment prior to the final rule publishing, at such time that a notice of opportunity to comment is published, it shall apply the final rule.

V. Regulatory Certifications

Regulatory Planning and Review

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether a regulatory action is significant as defined by E.O. 12866 and will review significant regulatory actions. OIRA has determined that this proposed rule is not significant as defined by E.O. 12866. E.O. 13563 reaffirms the principles of E.O. 12866

while calling for improvements in the Nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Department has developed the proposed rule consistent with E.O. 13563.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), OIRA has designated this proposed rule as not a major rule as defined by 5 U.S.C. 804(2).

National Environmental Policy Act

The proposed rule would update, consolidate, and streamline the process by which the public may file objections seeking administrative review for proposed projects and activities implementing land management plans on national forests. Departmental regulations at 7 CFR 1b.4(c)(20) exclude from documentation in an environmental assessment or environmental impact statement “rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions.” The Department’s preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Regulatory Flexibility Act

The Department has considered this proposed rule under the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This proposed rule would not have any direct effect on small entities as defined by the Regulatory Flexibility Act. This proposed rule would not impose recordkeeping requirements on small entities; would not affect their competitive position in relation to large entities; and would not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Department has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Department has considered this proposed rule under the requirements of E.O. 13132, *Federalism*. The Department has determined that the proposed rule conforms with the federalism principles

set out in this E.O. and would not impose compliance costs on the States; and would not 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. Therefore, the Department has concluded that this proposed rule would not have federalism implications.

Consultation and Coordination With Indian Tribal Governments

E.O. 13175, *Consultation and Coordination with Indian Tribal Governments*, requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions 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 proposed rule would update, consolidate, and streamline the process by which the public may file objections seeking administrative review for proposed projects and activities implementing land management plans on national forests. The Department has reviewed this proposed rule in accordance with the requirements of E.O. 13175 and has determined that this proposed rule could have substantial direct effects on Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, consultation and coordination with Indian Tribal governments are required for this proposed rule.

Tribal Summary Impact Statement: On September 29, 2025, Tribes and Alaska Native Corporations were notified by email about the opportunity to consult on proposed changes to regulations at 36 CFR part 218. The Forest Service provided a National Policy Summary Analysis describing the proposal and identifying how implementation may affect Tribal governments, Alaska Native Corporations, and the citizens they represent. This information was also available on the Forest Service National Consultation web page at <https://www.fs.usda.gov/working-with-us/tribal-relations/national-consultation>. As of the publication of this notice, the Forest Service has not received any

requests for consultation or other feedback on this proposed rule from Tribes or Alaska Native Corporations.

Family Policymaking Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for a rule that may affect family well-being. The proposed rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment for the proposed rule.

Takings Implications

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*. The Department has determined that the proposed rule would not pose the risk of a taking of private property.

Energy Effects

The Department has reviewed the proposed rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*. The Department has determined that the proposed rule would not constitute a significant energy action as defined in E.O. 13211.

Civil Justice Reform

The Department has analyzed the proposed rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform*. Upon publication of the proposed rule, (1) all State and local laws and regulations that conflict with the proposed rule or that impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of the proposed rule on State, local, and Tribal governments and the private sector. The proposed rule would not compel the expenditure of \$100 million or more, adjusted annually for inflation, in any 1 year by State, local, and Tribal governments in the aggregate or by the private sector. Therefore, a statement under section 202 of the Act is not required.

Paperwork Reduction Act

The proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 218

Administrative practice and procedure, National forests.

Therefore, for the reasons set forth in the preamble, the Department proposes to amend chapter II of title 36 of the Code of Federal Regulations as follows:

■ 1. Revise part 218 to read as follows:

PART 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

Sec.

- 218.1 Purpose, applicability, and scope.
- 218.2 Definitions.
- 218.3 Designated opportunity for public comment.
- 218.4 Projects and activities subject to the objection process.
- 218.5 Projects and activities not subject to the objection process.
- 218.6 Who may file an objection.
- 218.7 Objection filing period.
- 218.8 Notice of opportunity to object.
- 218.9 Filing an objection.
- 218.10 Evidence of timely filing.
- 218.11 Objections or issues set aside from review.
- 218.12 Review of objections.
- 218.13 Timing of finding or decision.
- 218.14 Emergency situations.
- 218.15 Secretary and Under Secretary authority.
- 218.16 Judicial proceedings.
- 218.17 Severability.

Authority: Pub. L. 108–148, 117 Stat. 1887 (16 U.S.C. 6515); Sec. 428, Pub. L. 112–74, 125 Stat. 1046 (16 U.S.C. 6515 note); Sec. 431, Pub. L. 113–76; Sec. 8006, Pub. L. 113–79.

§ 218.1 Purpose, applicability, and scope.

This regulation establishes an administrative review process (hereinafter referred to as “objection process”) for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a finding of no significant impact (FONSI) or a record of decision (ROD). The objection process is the sole means of administrative review for qualifying projects.

§ 218.2 Definitions.

The following definitions apply to this part:

Commenter. An individual or entity that submits timely, specific written comments that meet the requirements outlined in § 218.3.

Contact information. For comments submitted electronically, this is a current email address at which an entity or individual may be reached. For comments not submitted electronically, this is a current phone number or a current physical mailing address where an entity or individual may be reached.

Entity. For purposes of eligibility to file an objection (§ 218.6), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

Environmental assessment (EA). See NEPA section 111(4), 42 U.S.C. 4336e(4).

Environmental documents. See NEPA section 111(5), 42 U.S.C. 4336e(5).

Environmental impact statement (EIS). See NEPA section 111(6), 42 U.S.C. 4336e(6).

Finding of no significant impact (FONSI). See NEPA section 111(7), 42 U.S.C. 4336e(7).

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in the direct line of command from the Chief.

Issue. A logical cause-and-effect relationship between the actions proposed (cause) and the reasonably foreseeable impacts (effect) on resources found in the affected environment.

Lead commenter or objector. The individual or entity identified to represent all other commenters or objectors (for comments or objections submitted with multiple individuals and/or entities listed) for the purposes of communication, written or otherwise, regarding the comments or objections. (Also see definitions for *Commenter* and *Objector*.)

Mitigations. Constraints or requirements that avoid, minimize, or compensate for adverse impacts caused by a proposed action or selected alternative, which are documented in a FONSI or ROD and are determined by the responsible official, in accordance with statutory or regulatory authority, in reaction to the effects described in an EA or EIS.

Name. The first and last name of an individual or the complete name of an entity. (An electronic username is insufficient for the identification of an individual or entity.)

National Forest System land. All lands, waters, or interests therein administered by the Forest Service (16 U.S.C. 1609).

Objection. The written document filed with a responsible official by an

individual or entity seeking administrative review of a project or activity implementing a land management plan and documented with a FONSI or ROD.

Objector. An individual or entity filing an objection who meets the eligibility requirements associated with the filed objection (§ 218.6).

Proposal (or Project or Activities). (See NEPA section 111(12), 42 U.S.C. 4336e(12)).

Project record (or proposal record). All relevant documentation and records, including all environmental analysis documents and comment submissions, that contain information the responsible official relies on to make iterative decisions throughout the NEPA process or to determine if and how the action will be approved.

Recommendations. Actions the responsible official should consider taking to resolve an issue. Actions may include: choosing not to take action; modifying alternatives, including the proposed action; developing and evaluating alternatives that have not been previously given serious consideration by the responsible official; supplementing, improving, or modifying analyses; considering science or literature that has not been previously considered; or making factual corrections.

Record of decision (ROD). A documented determination by the responsible official on how to proceed with respect to a proposed action and action alternatives that have reasonably foreseeable significant impacts on the quality of the human environment, as described in an environmental impact statement.

Responsible official. The Forest Service employee who has the authority to determine: when NEPA applies, what level of NEPA review is appropriate, the extent of environmental review, the final NEPA finding, and compliance with other applicable laws, regulations, and executive orders; and how to proceed for a proposed action or action alternative(s).

Scope. The range of actions and alternatives developed for a proposal, or the issues and impacts to be considered in an environmental analysis.

Specific written comments. A written statement that identifies a substantive issue that is within the scope of the proposed action. See the definitions provided for *issue*, *scope*, and *substantive*.

Substantive. Information that meaningfully informs the consideration of reasonably foreseeable impacts on the human environment, the resulting significance determination or decisions

on how to proceed (that is, alternatives to be considered or analyzed or the alternative selected for implementation), or compliance with applicable laws and regulations.

§ 218.3 Designated opportunity for public comment.

(a) **Designated opportunity.** The responsible official shall provide notice of a designated opportunity for public comment for projects and activities subject to the objection process (see § 218.4). EAs or EISs for which an opportunity for public comment or an objection process has already been provided and that are updated to include changes stemming from the designated opportunity for public comment or objection review process, or when issuing updated or supplemental environmental documents in response to court orders, shall not be subject to another opportunity for comment.

(b) **Notice of opportunity.** Notice of the opportunity to comment will be published on the USDA website where the EA or EIS, or preliminary information associated with these documents, is published. The notice shall:

(1) Disclose that the project or activity is subject to the objection process (§ 218.4) unless at any point in the development and analysis process the project or activity is no longer subject to the objection process (§ 218.5 or § 218.15).

(2) Specify how comments will be submitted (for example, mailing address, email address, web platform);

(3) State the name and title of the responsible official to whom the comments are to be addressed;

(4) Specify where the information for comments can be located electronically;

(5) State the date the notice of opportunity is published on a USDA website and the dates the designated opportunity for public comment begins and ends (see paragraphs (c)(2) and (3) of this section); and

(6) Include the requirements for filing comments as found in paragraphs (e) through (h) of this section or include a link to the requirements as provided in the Electronic Code of Federal Regulations.

(c) **Time to file comments.** The length of the designated opportunity for public comment for a proposed action that is to be documented in an EA is 10 days, or 20 days for a proposed action that is to be documented in an EIS, with no extension. Notice of the opportunity to comment will be published on the USDA website where the EA or EIS, or preliminary information associated with these project documents, is published.

(1) **Computation.** All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. in the time zone of the receiving office for comments filed by electronic means such as email).

(2) **Start date.** The date after a notice of an opportunity for comment is published on a USDA website is the first day of the designated opportunity for public comment.

(3) **End date.** The date specified as the last day of the designated opportunity for public comment, as stated in the notice of opportunity for comment.

(d) **Providing information for comment.** The timing of the notice of a designated opportunity for public comment will be determined by the responsible official. For an EIS, the opportunity for comment may be combined with the request for comment included in the notice of intent to publish an EIS, as required by NEPA § 107(c); 42 U.S.C. 4336a(c) and the applicable NEPA regulations, and the notice of intent may be referenced as the place to find the information for comment. The information provided for comment shall include, at a minimum:

(1) A detailed description of the purpose and need and proposed action;

(2) Alternatives, if any, already being considered for detailed analysis, with sufficient description to indicate how each alternative differs from the proposed action. Discussion may include alternatives already considered but not carried forward for detailed analysis, and the rationale for this;

(3) Issues to be analyzed in detail. Discussion may include preliminary anticipated effects associated with issues to be analyzed in detail, and may also identify those issues considered but not carried forward for detailed analysis, and the rationale for this; and

(4) Preliminary applicable laws and regulations that the responsible official will consider for compliance during the environmental review process.

(e) **Comment requirements.** To be eligible to submit an objection, individuals and entities must provide the following in writing during the designated opportunity for public comment:

(1) Commenter's name and contact information;

(2) The name of the project or activity and the name(s) of the national forest(s) on which the project or activity will be implemented;

(3) Specific written comments, along with supporting reasons. Commenters should also provide recommendations for the responsible official to consider that would remedy the issues raised; and

(4) Identification of the individual or entity who authored the comment(s) and, when multiple names are listed on a comment, identification of the lead commenter. Individual members of an entity must submit their own comments to establish personal eligibility to object. Comments received on behalf of an entity are considered as those of the entity only.

(f) *Timeliness.* It is the commenter's responsibility to ensure the timely filing of a comment in accordance with the notice. Timeliness must be determined by the following indicators:

(1) The date of the U.S. Postal Service postmark for a hard-copy comment received before the close of the fifth business day after the designated opportunity for public comment,

(2) The shipping date for delivery by private carrier for a hard-copy comment received before the close of the fifth business day after the designated opportunity for public comment, or

(3) The Agency's electronically generated date and time for email and web-based platforms.

(g) *Submission format.* Comments submitted on or via electronic external media (such as CD-ROMs or external hard drives) shall not be accepted due to computer security policies. If comments from the same entity or individual are submitted in more than one format (for example, hard-copy, email, and electronically through web-based platforms), the responsible official will accept and review only one submission at their discretion. Objections submitted electronically must be in .doc, .docx, .pdf, or .txt document formats or provided on an Agency web-based platform. Documents must not have permission restrictions for printing, copying, or accessing text by screen reader devices.

(h) *References and attachments.* The following documents may be incorporated by reference in the comments submitted. Other documents, attachments, or website links are not allowed except as specified.

(1) All or part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the information provided for comment.

(4) Science or literature may be considered if the commenter clearly identifies the cause-and-effect issues

relating literature to the environmental analysis. Science or literature must be included as an attachment in portable document format (.pdf) that does not have permission restrictions for printing, copying, or accessing text by screen reader devices. Website links will not be accepted.

(i) *Comment consideration.* The responsible official shall consider all specific written comments to identify the substantive issues raised and the recommendations made to remedy the issues. All written comments received by the responsible official shall be placed in the project record and shall become a matter of public record.

§ 218.4 Projects and activities subject to the objection process.

The objection process applies to:

(a) Projects and activities implementing land management plans for which an EA is prepared, including Healthy Forests Restoration Act (HFRA) projects;

(b) Projects and activities implementing land management plans for which an EIS is prepared, including HFRA projects; and

(c) Amendments to a land management plan that are included as part of a project or activity covered in paragraphs (a) or (b) of this section, which are applicable only to that project or activity.

§ 218.5 Projects and activities not subject to the objection process.

(a) The objection process does not apply when:

(1) No timely, specific written comments regarding the project or activity are received during the designated opportunity for public comment (see § 218.3);

(2) Any project or activity is categorically excluded from documentation in an EA or EIS;

(3) Proposed land management plans, plan revisions, and plan amendments are subject to the objection process set forth in part 219, subpart B of this chapter;

(4) A FONSI or ROD is updated to incorporate changes stemming from the objection review process or when otherwise issuing an updated FONSI or ROD that does not change the Agency's original finding or decision;

(5) Rules are promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216); or

(6) Authorizing the following:

(i) Emergency Situation Determinations issued under section

40807 of the Infrastructure and Investment Jobs Act of 2021 or determinations of emergency situations pursuant to any applicable emergency authorities.

(ii) Emergency situations pursuant to § 218.14.

(b) For projects or components of projects that rely on other environmental analyses that have already been through the objection process of this part, a previous Forest Service administrative review process, or another agency's pre- or post-decisional administrative review process, the environmental analysis relied upon shall not be subject to objection review.

§ 218.6 Who may file an objection.

(a) Individuals and entities, including Federally recognized Indian Tribes and Alaska Native Corporations, that submitted comments in response to the designated opportunity to comment as required in § 218.3 and in accordance with § 218.3(e) through (h) for a project or activity subject to this part may file an objection. Objections from one or more individuals or entities must identify a lead objector (§ 218.9(d)(2)).

(b) Federally recognized Indian Tribes and Alaska Native Corporations are also eligible to file an objection when specific written comments are provided during Federal-Tribal consultations.

(c) Federal agencies may not file objections.

(d) Federal employees who otherwise meet the requirements of this regulation for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635.

§ 218.7 Objection filing period.

(a) *Time to file an objection.* Written objections must be filed with the responsible official within 10 days following the publication of the draft FONSI or 20 days following the publication of the draft ROD on a USDA website. The objection filing period will not be extended. Computation will follow § 218.3(c)(1).

(b) *Start date.* The day after publication of the draft FONSI (for an EA) or draft ROD (for an EIS) required by paragraph (c) of this section is the first day of the objection filing period.

(c) *Publication date.* The publication date of the draft FONSI or draft ROD on a USDA website is the exclusive means for calculating the time to file an objection. The most recent version of the applicable EA or EIS may be published prior to publication of the draft FONSI or draft ROD, but it must

be available to the public at the time the draft FONSI or draft ROD is published. The responsible official shall ensure the term "draft" is included in the title of the FONSI or ROD for purposes of publishing the documents for the objection process.

(d) *End date.* The date specified as the last day of the objection period as stated in the notice of opportunity to object (§ 218.8(b)(5)). Objectors may not rely on dates or timeframe information provided by any other source.

§ 218.8 Notice of opportunity to object.

(a) For projects and activities subject to the objection process (see § 218.4), the responsible official shall offer eligible individuals and entities (see § 218.6) an opportunity to object. Notice of the opportunity to object will be published on the USDA website where the applicable EA and draft FONSI or EIS and draft ROD are published.

(b) The notice shall be posted on a USDA website on the same day as the draft FONSI or draft ROD and must:

(1) Specify how objections will be submitted (for example, mailing address, email address, web platform);

(2) State the name and title of the responsible official offering the opportunity to object);

(3) Specify where the EA and draft FONSI, or the EIS and draft ROD, can be located electronically;

(4) Identify the date the draft FONSI or draft ROD was published on a USDA website and specify the start date of the objection filing period, as determined in accordance with § 218.7(b);

(5) Identify the objection filing period end date, as determined in accordance with § 218.7(d); and

(6) Include the requirements for filing an objection as found in § 218.9 or include a link to the requirements as provided in the Electronic Code of Federal Regulations.

§ 218.9 Filing an objection.

(a) Objections must be filed with the responsible official in writing and shall be formatted to be no longer than 15 pages for an EA and draft FONSI or 30 pages for an EIS and draft ROD (not including documents and attachments as permitted in paragraph (b) of this section).

(1) For objections submitted electronically, a page is defined as 8.5 by 11 inches with one-inch margins, in at least 12-point proportionally spaced font, and single-spaced. Electronic documents must be in .doc, .docx, .pdf, or .txt document formats and must not have permission restrictions for printing, copying, or accessing text by screen reader devices. For objections

submitted via web-based forms (not uploaded as an electronic document), a page is defined as 500 words.

(2) Objections submitted on or via electronic external media (such as CD-ROMs or external hard drives) shall not be accepted due to computer security policies. If objections from the same entity or individual are submitted in more than one format (for example, hard-copy, email, and electronically through web-based platforms), the responsible official will accept and review only one submission at their discretion. (b) The following documents may be incorporated by reference. Other documents, attachments, or website links are not allowed except as specified.

(1) All or part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the project EA or EIS, or the draft FONSI or draft ROD, that are subject to objection.

(4) Comments previously provided to the Forest Service by the objector during the opportunity for public comment.

(5) Science or literature not previously considered that was published or otherwise made available after the designated opportunity for public comment may be considered at the responsible official's discretion if the objector clearly identifies the cause-and-effect issues relating the literature to the environmental analysis. The science or literature must be included as an attachment in portable document format (.pdf) that does not have permission restrictions for printing, copying, or accessing text by screen reader devices. Website links will not be accepted.

(c) Issues raised in objections must be based on previously submitted specific written comments provided by the objector during the designated opportunity for public comment (see § 218.3(e), *Comment requirements*) unless based on:

(1) Modified alternatives, including the proposed action;

(2) Alternatives not previously analyzed;

(3) Supplemental or modified analyses;

(4) Consideration of science or literature not previously considered because it was published after the designated opportunity to comment, and the objector clearly identifies cause-and-effect issues relating the literature to the environmental analysis.

(d) At a minimum, an objection must include the following:

(1) Objector's name and contact information;

(2) When multiple names are listed on an objection, identification of the lead objector;

(3) The name of the project or activity and the name(s) of the national forest(s) on which the project or activity will be implemented;

(4) Clearly stated issues, and for each issue:

(i) A statement that demonstrates the connection between the issue included in the objection and the issue as it was included in prior specific written comments or a statement indicating the issue is based on one or more of the exceptions in paragraph (c); and

(ii) Clearly articulated recommendations for the responsible official to consider taking and/or clearly stated specific mitigations for the responsible official to consider (with statutory or regulatory authority for the mitigation specified) when finalizing the FONSI or ROD.

§ 218.10 Evidence of timely filing.

It is the objector's responsibility to ensure the timely filing of a written objection with the responsible official. Timeliness will be determined by the following indicators:

(a) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing period;

(b) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing period; or

(c) The Agency's electronically generated posted date and time for email and web-based platforms.

§ 218.11 Objections or issues set aside from review.

(a) The responsible official must set aside as a whole and not review an objection when one or more of the following apply:

(1) Objections are not filed in a timely manner (see § 218.10);

(2) The project or activity is not subject to the objection process (see § 218.5);

(3) The individual or entity submitting the objection did not submit specific written comments regarding the project or activity during the designated opportunity for public comment in accordance with § 218.3(e) through (h);

(4) The objection only restates or cites previously submitted comments;

(5) The objection, as a whole, refers to the wrong proposal or national forest (or other applicable administrative unit);

(6) The objection does not meet all the requirements of § 218.9;

(7) The objector withdraws their objection;

(8) The responsible official cancels the objection process for the project or activity or withdraws the project or activity; and/or

(9) The document is labeled or submitted as an “objection” but is entirely supportive in nature.

(b) The responsible official must set aside objections in part (not review certain issues in the objection) when one or more of the following apply to the issue(s) raised:

(1) Not within the scope of the project or activity, or is not within the responsible official’s decision authority (that is, the responsible official does not have discretion to change certain aspects of the project or does not have statutory authority to require certain outcomes);

(2) Refers to the wrong project or national forest (or other applicable administrative unit);

(3) Contains no statement, or the statement is determined to be inaccurate, that demonstrates the connection between the issue included in the objection and the issue as it was included in prior specific written comments for the project, or indicates the issue is based on one or more of the exceptions in § 218.9(c); and/or

(4) Contains no clearly articulated recommendations for the responsible official to consider taking, and/or no clearly stated mitigation for the responsible official to consider including (with statutory authority for the mitigation specified), when finalizing the FONSI or ROD.

§ 218.12 Review of objections.

(a) The responsible official shall review the objections and issue a single written response that does not exceed five pages. A page is defined as 8.5 by 11 inches with one-inch margins, in at least 12-point proportionally spaced font, and single-spaced.

(b) The written response shall be issued after the close of the objection filing period; within no more than 15 days for objections filed on a FONSI, or 20 days for objections filed on a ROD. The objection response will be posted on the USDA website where the EA and draft FONSI, or the EIS and draft ROD, are published.

(1) *Computation.* All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period begins or expires on a Saturday, Sunday, or Federal holiday, the start or end date is extended to the next Federal working day.

(2) *Start date.* The starting date for the objection response period is the day after the objection filing period ends.

(3) *End date.* The ending date for the objection response period is the close of business, 30 calendar days from the start date.

(c) The response shall state the following at a minimum:

(1) The objections that were reviewed in whole or in part (meaning some issues were set aside from review);

(2) Objections, if any, that were set aside in whole or in part from review and the reasons for this (see § 218.11(a) and (b)); and

(3) Changes the responsible official will make prior to finalizing the FONSI or ROD, if any, in response to the issues raised or recommendations made in the objections that were reviewed in whole or in part.

(d) No further review within the USDA, to include the Forest Service, is available for the response to an objection.

§ 218.13 Timing of finding or decision.

(a) *When an objection response is issued.* Upon publishing the response required in § 218.12, and unless withdrawing the project or activity, the responsible official shall promptly make any changes as communicated in the response (§ 218.12(b)) and, once complete, finalize and republish the FONSI or ROD and ensure the term “draft” is removed. Notification of the availability of the FONSI or ROD shall be provided in accordance with the applicable NEPA regulations and also include notification to any individuals or entities that have filed an objection, if they are not already included in the notification process.

(b) *When no objections are subject to review.* If there are no eligible objectors or all objections filed are set aside from review (§ 218.11(a) and (b)), the responsible official shall, unless withdrawing the project or activity, promptly publish the final FONSI or ROD to a USDA website and provide notification of the availability of the final FONSI or ROD in accordance with the applicable NEPA regulations. Unless other statutes or regulations require otherwise, implementation of the Agency action may occur on, but not before, the fifth business day following the end of the objection filing period.

(c) *When a project is not subject to objection.* When a project or activity is not subject to the objection process (§ 218.5), notification of the availability of the FONSI or ROD shall be provided in accordance with the applicable NEPA regulations.

§ 218.14 Emergency situations.

(a) *Circumstances requiring immediate implementation.* A situation may arise where immediate implementation of a proposed project or activity is needed, such as to provide relief from hazards threatening human health and safety, mitigate threats to natural resources on National Forest System or adjacent lands, or avoid a loss of commodity value sufficient to jeopardize the Agency’s ability to accomplish project objectives directly related to resource protection or restoration. The determination that immediate implementation is needed shall be made by the Chief or Associate Chief based on an examination of the relevant information. When a determination is made by the Chief or Associate Chief that an emergency situation exists for which immediate implementation of a proposed project or activity, or portion thereof, is necessary, the project or activity, or portion thereof, shall not be subject to the pre-decisional objection process under this part, and implementation may proceed as follows:

(1) Immediately after notification, when the action is documented in a FONSI or ROD.

(2) The responsible official shall identify the immediate action determination made for a project or activity in the notification of the FONSI or ROD.

(b) *Authorized hazardous fuel reduction projects.* Determinations made under this section shall not apply to an authorized hazardous fuel reduction project under title I of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*).

§ 218.15 Secretary and Under Secretary authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture or the Under Secretary for National Resources and Environment from exercising any statutory authority regarding the protection, management, or administration of National Forest System lands.

(b) Projects and activities finalized, authorized, or approved by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

§ 218.16 Judicial proceedings.

Any filing for Federal judicial review of a decision covered by this subpart is premature and inappropriate unless the plaintiff has exhausted the administrative review process set forth in this part (see 7 U.S.C. 6912(e) and 16 U.S.C. 6515(c)).

§ 218.17 Severability.

(a) *Severability.* The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the agency's intention that the validity of the remainder of those parts will not be affected, with the remaining sections and all applications thereof to continue in effect.

Courtney Stevens,

Acting Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 2026-02392 Filed 2-5-26; 8:45 am]

BILLING CODE 3411-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2025-2831; FRL-13067-01-R3]

Air Plan Approval; Pennsylvania; Proposed Revision to Philadelphia Gas Works, Richmond Plant Reasonably Available Control Technology Plan Under the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or "the Agency") is proposing to approve a State implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. In this rulemaking, the EPA proposes to approve a revision to the reasonably available control technology (RACT) Plan for the Philadelphia Gas Works, Richmond Plant (PGW Richmond), a major source of nitrogen oxides (NO_x). The proposed revision would remove a condition from the RACT Plan Approval, previously incorporated into Pennsylvania's SIP on October 7, 2016. The proposed revision results in no change of emission allowances under RACT. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 9, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2025-2831 at www.regulations.gov, or via email to talley.david@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 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:

Katharine Payne, Permits Branch (3AP10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2183. Ms. Katharine Payne can also be reached via electronic mail at payne.katharine@epa.gov.

SUPPLEMENTARY INFORMATION: On September 7, 2023, the Pennsylvania Department of Environmental Protection (PADEP) submitted on behalf of the City of Philadelphia, Department of Public Health, Air Management Services (AMS) a proposed revision to the Pennsylvania SIP to satisfy the RACT requirements for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS) for Philadelphia.

I. Background**A. General**

Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. Sections 182(b)(2) and (f)(1) of the CAA require

States with moderate, or worse, ozone nonattainment areas to implement RACT controls on each category of stationary sources covered by a control technique guideline (CTG) document issued by the EPA and on all major stationary sources of volatile organic compounds (VOC) and NO_x emissions located in the nonattainment area.¹

On July 18, 1997 (62 FR 38856), the EPA revised the NAAQS for ground-level ozone, setting the standard at 0.08 parts per million (ppm) averaged over an 8-hour time frame. On April 15, 2004, the EPA issued final designations for the 1997 8-hour ozone NAAQS, which included Philadelphia County as part of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate ozone nonattainment area. See 69 FR 23858, at 23931 (April 30, 2004). The nonattainment designation for Philadelphia under the 1997 8-hour ozone NAAQS, and its location in the ozone transport region (OTR), triggered Pennsylvania's obligation to submit a SIP revision addressing how it meets the CAA RACT requirements in Philadelphia under this standard.

On March 27, 2008 (73 FR 16436), the EPA significantly strengthened the 8-hour ozone NAAQS by revising the primary 8-hour ozone standard to a level of 0.075 ppm. On March 6, 2015 (80 FR 12264), the EPA published a final rule for the implementation of the 2008 8-hour ozone NAAQS, while at the same time revoking the 1997 8-hour ozone NAAQS, effective on April 6, 2015.² The EPA's previous approach, the 2008 8-hour ozone Implementation Rule established anti-backsliding principles to transition from implementing the revoked 1997 8-hour ozone NAAQS to the 2008 8-hour ozone NAAQS, the EPA clarified that RACT under the 1997 8-hour ozone NAAQS, among other requirements, continues to apply to a nonattainment area, in accordance with its designation and classification for the 1997 8-hour ozone NAAQS at the time of the revocation of the standard. Therefore, 1997 8-hour ozone RACT continues to be an applicable requirement for Philadelphia.

B. EPA's Requirements Under the 1997 8-Hour Ozone RACT

On November 29, 2005 (70 FR 71612), the EPA published the Phase 2 Ozone

¹ A major source in an ozone nonattainment area is defined as any stationary source that emits or has the potential to emit NO_x and VOC emissions above a certain applicability threshold that is based on the classification of the ozone nonattainment area. See "major stationary source" in 40 CFR 51.165.

² "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" Final Rule, (80 FR 12264, March 6, 2015).

Implementation Rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS.³ This rule addressed, among other things, control and planning obligations as they apply to nonattainment areas under the 1997 8-hour ozone NAAQS, including RACT and RACM. The EPA specifically required that States meet the RACT requirements, either through a certification that previously adopted RACT controls in their SIP revisions approved by the EPA under the 1-hour ozone NAAQS continue to represent adequate RACT control levels for 1997 8-hour ozone NAAQS attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels.⁴

II. Summary of Proposed SIP Revision

On October 7, 2016 (81 FR 69687), the EPA took final action to approve SIP revisions that were submitted by PADEP on behalf of AMS in order to satisfy RACT requirements of the 1997 ozone NAAQS applicable to sources located in Philadelphia. Included in that approval were source-specific requirements applicable to three 295 horsepower Caterpillar engines located at PGW Richmond. Specifically, Condition 1(B)(2) of AMS' July 9, 2015 RACT Plan Approval required that the timing of the engines be set and maintained at four degrees retarded relative to the standard timing.⁵

On September 7, 2023, PADEP submitted to the EPA for approval, a SIP package that contains a revision to Pennsylvania's SIP to amend the source-specific RACT requirements for PGW Richmond by removing condition 1(B)(2). In this submittal, PADEP indicated that Condition 1(B)(2) was mistakenly included in the RACT Plan Approval for PGW Richmond. 25 Pennsylvania Code (Pa. Code) 129.93(c) contains a list of source types that are required to meet RACT through the "... installation, maintenance and operation of the source in accordance with manufacturers specifications." Condition 1(B)(2) appears to have been included in order to constrain the engines in such a way that they would be subject to the presumptive RACT requirements of 25 Pa. Code 129.93(c). However, the engines as installed did

not have timing as described in 25 Pa. Code 129.93(c)(3). Modifying the timing to 4 degrees retarded relative to standard timing would damage the engines and would be contrary to the presumptive RACT requirement the condition was intended to meet (*i.e.*, installation in accordance with manufacturers specifications). Furthermore, based on the permitted use of the three Caterpillar Engines 135GU 295 horsepower Units at PGW Richmond, AMS determined that the three emission units meet the criteria of 25 Pa. Code 129.93(c)(5), and are therefore still subject to the presumptive RACT requirement to install, maintain and operate the engines in accordance with manufacturer's specifications.

Removing Condition 1(B)(2) from the PGW Richmond RACT Plan Approval results in no change of emission allowances under RACT because the RACT requirement of 25 Pa. Code section 129.93(c) is the same for source categories listed in 25 Pa. Code section 129.93(c)(3) and (c)(5). Updating this source type will remove the source as a case-by-case RACT requirement from the Pennsylvania SIP.

III. Proposed Action

The EPA's review of the materials indicate that Condition 1(B)(2) should be removed from the Philadelphia RACT Plan Approval for PGW Richmond that was previously incorporated into the Pennsylvania SIP. The EPA proposes to approve the Pennsylvania SIP revision, which was submitted on September 7, 2023. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA proposes to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revised RACT Plan Approval for PGW Richmond, as described in section II of this document. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

³ "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2," (70 FR 71612, November 29, 2005).

⁴ For more information, see the preamble of the final Phase 2 Ozone Implementation Rule for a discussion of the EPA's interpretation of the CAA RACT requirements for the 1997 8-hour ozone NAAQS, in 70 FR 71652 through 71659 (November 29, 2005).

⁵ PGW RACT Plan Approval, 1/9/2015.

recordkeeping requirements, Volatile organic compounds.

Amy Van Blarcom-Lackey,

Regional Administrator, Region III.

[FR Doc. 2026-02381 Filed 2-5-26; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[EPA-HQ-OLEM-2025-2038; FRL-8504-02-OLEM]

RIN 2050-AH21

US Ecology Nevada, Inc. High Mercury Subcategory Wastes Land Disposal Restrictions Variance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant, with conditions, US Ecology Nevada Inc.'s (USE) petition for a site-specific treatability variance from the Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR) treatment standards. USE's petition is for treatment and disposal of elemental mercury waste generated from retorting high mercury waste in accordance with the LDR technology-based standard of RMERC. The EPA believes that the petition demonstrates that the LDR standard for placing elemental mercury generated from RMERC back into commerce for reuse is inappropriate and the treatment variance is sufficient to minimize threats to human health and the environment posed by land disposal of the waste. If the variance is granted, the existing LDR treatment standard of RMERC will continue to apply to high mercury hazardous wastes, but the elemental mercury generated from this process will be treated and land disposed subject to specified conditions at both Bethlehem Apparatus in Hellertown, Pennsylvania and USE's Beatty, Nevada, Subtitle C treatment, storage, and disposal (TSD) facility where treated mercury wastes will be disposed in a designated monofill.

DATES: Comments must be received on or before March 9, 2026.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OLEM-2025-2038, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m. Eastern time, Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bethany Russell, Waste Characterization Branch, Waste Identification, Notice, and Generators Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566-2233; email address: russell.bethany@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Docket

EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2025-2038. All documents in the docket are listed in the <https://www.regulations.gov> index. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the EPA Docket Center. The Public Reading Room for the docket is open from 8:30 a.m. to 4:30 p.m. Eastern, Monday through Friday, excluding holidays. The telephone number for the Public Reading Room and Docket Center is (202) 566-1744.

B. Written Comments

Submit your comments, identified by Docket ID No. EPA-HQ-OLEM-2025-2038, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

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>.

C. Submitting CBI

Do not submit information that you consider to be CBI electronically through <https://www.regulations.gov> or email. Send or deliver information identified as CBI to only the following address: ORCR Document Control Officer, Mail Code 5305-P, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; Attn: Docket ID No. EPA-HQ-OLEM-2025-2038.

Clearly mark the part or all the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a CD-ROM or disk that does not contain CBI, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

II. General Information

A. Does this document apply to me?

This action applies only to elemental mercury treated at Bethlehem Apparatus Hellertown, Pennsylvania and land disposed at USE's facility located at Highway 95, 11 Miles South of Beatty, Beatty, Nevada 98003.

B. What action is the Agency taking?

On September 22, 2025, the EPA received a complete petition from USE requesting a variance from the existing

prohibition on land disposal of elemental mercury (metallic mercury, Hg(0)) generated from the treatment of waste codes D009 and U151 high mercury subcategory (high mercury wastes) within the United States. High mercury wastes are those containing a concentration of greater than 260 mg/kg mercury. The LDR of 40 CFR 268.40 requires RMERC for treatment of waste codes D009 and U151 high mercury wastes. RMERC is the technology code for retorting or roasting in a thermal processing unit capable of volatilizing mercury for recovery/reclamation (see 40 CFR 268.42). The regulations do not authorize the land disposal of the elemental mercury reclaimed from the RMERC process. Instead, the LDR treatment standard requires elemental mercury reclaimed from these wastes be legitimately recycled (see 40 CFR 260.43) by placing the elemental mercury into commerce for use or reuse as an effective substitute for a commercial chemical product (see 261.1(c)(5)). When the recycling requirement for elemental mercury was established, there was a balanced market for elemental mercury. However, the supply of reclaimed elemental mercury presently exceeds the market demand and will continue to exceed market demand for the foreseeable future, and, for that reason, excess elemental mercury generated from RMERC is being stored at authorized sites across the country. In this action, the EPA is proposing to provide USE for their Beatty, Nevada facility, a variance from the requirement that elemental mercury reclaimed from RMERC of D009, U151, or Bevill-exempt high mercury wastes generated in the U.S. gold mining industry¹ be placed into commerce. Specifically, the EPA is proposing to grant, with conditions, USE's petition for a variance pursuant to 40 CFR 268.44 to allow land disposal of elemental mercury converted to mercury sulfide powder that is then blended with linear low-density polyethylene (LLDPE) and extruded as a monolith into an impermeable/non-reactive container that is placed into a future permitted monofill located at USE's facility in Beatty, Nevada. At the time of this proposed approval, USE has an agreement with Bethlehem Apparatus to perform the treatment

portion of this process. See section VII., Future Amendments to this Variance, for procedures that may allow USE to retain this variance if USE moves any portion of the treatment process from Bethlehem Apparatus's Hellertown, Pennsylvania location.

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

Sections 3004(d) through (g) of RCRA, 42 U.S.C. 6294(d)–(g), prohibit the land disposal of hazardous wastes unless such wastes meet the LDR treatment standards (treatment standards) established by the EPA (the Agency). Section 3004(m) of RCRA, 42 U.S.C. 6924(m) requires the EPA to set levels or methods of treatment, if any, that substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste, so that short-term and long-term threats to human health and the environment are minimized.

When facilities generate hazardous wastes that cannot be treated to the specified levels or when it is technically inappropriate for such wastes to undergo the prescribed treatment, generators or treaters of hazardous waste can apply for a variance from an LDR treatment standard. See 51 FR at 40605–40606, November 7, 1986, and 62 FR 64504, December 5, 1997. The requirements for an LDR treatment variance are found at 40 CFR 268.44 and LDR variance petitioners must follow the procedures in 40 CFR 260.20. Of note, 40 CFR 268.44(k) cross-references compliance with 40 CFR 268.7 for testing, tracking and recordkeeping requirements for generators, reverse distributors, treaters and disposal facilities.

In this case, EPA is proposing to act pursuant to 40 CFR 268.44(h) because it finds that the existing requirement is inappropriate, even though the treatment is technically possible, and the variance would be applicable to a specific treatment process conducted at Bethlehem Apparatus and disposal location at USE's TSD in Beatty, Nevada.² Specifically, as the USE

petition demonstrates, the required treatment standard of placing elemental mercury into commerce for reuse after RMERC is inappropriate because the small market demand for elemental mercury is greatly exceeded by the supply of elemental mercury recovered from D009 and U151 hazardous wastes and from Bevill wastes generated by the U.S. gold mining industry (https://www.epa.gov/system/files/documents/2023-12/2023-mercury-inventory-report_final.pdf) and the resulting stockpiled elemental mercury poses an ongoing potential hazard to human health and the environment. Approval of the petition, with conditions, will allow for the site-specific treatment and land disposal of elemental mercury in a manner that minimizes threats to human health and the environment posed by the waste.

III. Background

A. Mercury in the Environment

Mercury is a naturally occurring element. It enters the environment from natural sources (such as volcanoes) and human activities (such as industrial combustion and gold mining). Elemental mercury is an element that has not reacted with another substance. When mercury reacts with another substance, it forms a compound. Elemental mercury and mercury compounds have their own unique chemical properties, physical properties, and chemical structures. Once released into the environment, inorganic forms of mercury may be converted to the mercury compound methylmercury, which is the main form of organic mercury found in the environment. Methylmercury has been shown to be a developmental toxicant, with exposure causing subtle to severe neurological effects at very low levels of exposure, especially to fetuses and young children. For more information, visit the EPA website at <https://www.epa.gov/mercury/health-effects-exposures-mercury#methyl>.

The EPA's Mercury Study Report to Congress underscores the extensive research the Agency has conducted on mercury leading up to the 2008 Mercury Export Ban Act (MEBA) discussed later in this proposed approval. See Mercury Study Report to Congress, Volumes I–VIII, EPA-452/R-97-003, December 1997. In a separate action, the EPA identified mercury as one of the “53 persistent, bioaccumulative, and toxic chemicals and chemical categories which may be found in hazardous

sufficient to minimize threats to human health and the environment posed by land disposal of the waste.

¹ The issue has arisen that U.S. gold mining Bevill-exempt high mercury waste does not carry a waste code because of the Bevill exemption. Although exempt, Bevill waste is like D009/U151 wastes in that it must be retorted to extract the elemental mercury to meet DOE's acceptance criteria. After retorting, the prohibition on land disposal of elemental mercury remains and is unaffected by the Bevill exemption.

² According to 42 CFR 268.44(h)(2), a petitioner may obtain a variance from an applicable treatment standard if it is inappropriate to require the waste to be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. To show that this is the case, as applicable here, the petitioner must demonstrate that treatment to the specified level or by the specified method is technically inappropriate (for example, resulting in combustion of large amounts of mildly contaminated environmental media). Section 268.44(m) further requires the petitioner to demonstrate that compliance with the variance is

wastes regulated under RCRA.” See 63 FR 60332, November 9, 1998. A May 28, 1999, Advanced Notice of Proposed Rulemaking (ANPRM) (64 FR 28949) addressed a small but critical aspect of the broader mercury contamination issue, specifically focusing on the treatment and disposal of mercury-bearing hazardous wastes. Disposal of mercury is challenging because, if not properly treated before disposal, it can be released into the environment where it can react and be converted to methylmercury.

B. U.S. Laws and Treaties Affecting International Supply and Trade of Elemental Mercury and Mercury Compounds

Beginning in 2013, MEBA prohibited exports of elemental mercury (with very limited exceptions), provided for long-term management and storage of elemental mercury in the U.S. by the Department of Energy (DOE), and prevented the sale, distribution, or transfer of elemental mercury held by U.S. federal agencies. See Mercury Export Ban Act of 2008, Public Law 110–414, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Public Law 114–182. In 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act) expanded the export ban to include five mercury compounds: mercury (I) chloride or calomel; mercury (II) oxide; mercury (II) sulfate; mercury (II) nitrate; and cinnabar or mercury sulfide. That ban took effect on January 1, 2020. MEBA does not affect RCRA or RCRA regulations, with the exception that elemental mercury stored at the DOE facility, or elemental mercury that is destined for the DOE facility and meets other requirements outlined in MEBA as amended in 2016, is not subject to the RCRA storage prohibition of 3004(j) of the Solid Waste Disposal Act. See 42 U.S.C. 6939f(g).

The United States is a Party to the Minamata Convention on Mercury (Convention), which entered into force on August 16, 2017. The Convention includes several provisions to reduce exposure to mercury, including a prohibition on new mercury mines and the phase-out of existing ones and the phase-out and phase-down of mercury use in specified products and processes. Some articles of the Convention pertain only to elemental mercury, while others apply to mercury compounds, as well. Legal demand for elemental mercury continues to fall globally.

C. Industries Generating Mercury Wastes

The Inventory of Mercury Supply, Use, and Trade in the United States 2023 Report (visit EPA website at https://www.epa.gov/system/files/documents/2023-12/2023-mercury-inventory-report_final.pdf) shows how industrial use and reuse of mercury in the United States has been declining for decades, with significant changes in production and consumption patterns. Mercury has not been domestically produced from ore since 1990, when the last U.S. mine closed. However, mercury wastes continue to be generated as a byproduct from gold ore mining and secondary production processes. Nearly all mercury used in the U.S. now comes from secondary sources, which include soil cleanup and remediation wastes, spent batteries, chlor-alkali plants during decommissioning of electrolytic cells, mercury vapor and fluorescent lamps, dental amalgams, electrical apparatus, and measuring instruments. Secondary producers typically employ high-temperature roasting and retorting to reclaim mercury from these waste materials, followed by distillation to purify contaminated liquid mercury metal. Pursuant to MEBA, the DOE was directed to designate and operate a facility or facilities for the long-term management and storage of elemental mercury generated within the United States. See 42 U.S.C. 6939f(a). DOE issued a record of decision on December 2, 2024, selecting Waste Control Specialists, LLC (WCS) near Andrews, Texas (89 FR 95189) as the designated facility, but as of the date of this proposed action, WCS has not yet started accepting elemental mercury under MEBA.

D. Existing Mercury Treatment Standards

The EPA delineated two treatment subcategories for D009 and U151 mercury-containing hazardous waste in 40 CFR 268.40. The high mercury subcategory, which is relevant to this action, includes wastes with a total mercury concentration greater than or equal to 260 mg/kg, and the low mercury subcategory includes wastes with a total mercury concentration less than 260 mg/kg. Low mercury wastes are not mandated to follow a specific treatment technology but must achieve a numerical treatment standard of either 0.20 mg/L TCLP for nonwastewater residues from retorting or roasting or 0.025 mg/L TCLP for other nonwastewater low mercury wastes. For treatment of high mercury wastes, EPA

selected the Best Demonstrated Available Technology (BDAT) as incineration (IMERC) if organics are present within the high mercury wastestream and roasting or retorting (RMERC) when organics are not present, and both these treatment options involve separating elemental mercury from the rest of the waste. See 40 CFR 268.42(a), table 1. This elemental mercury reclaimed from high mercury waste cannot be land disposed as it was intended to be placed into commerce. RMERC residues must meet a numerical treatment standard of 0.20 mg/L prior to land disposal, as measured by the toxicity characteristic leaching procedure (TCLP), while all other nonwastewaters that exhibit or are expected to exhibit the characteristic of toxicity for mercury that are in the low mercury subcategory and are not residues from RMERC, must meet a more stringent standard of 0.025 mg/L TCLP. Elemental mercury contaminated with radioactive materials was never considered appropriate for placement into commerce and so has an existing land disposal treatment standard of amalgamation. See 40 CFR 268.42.

On January 29, 2003, EPA published a Notice of Data Availability (68 FR 4482) (the Notice) after reviewing studies conducted on the treatment of high mercury wastes. The EPA wanted to evaluate options to propose treatment and disposal alternatives to the existing LDR treatment standards of IMERC or RMERC. The Notice concluded that no technology demonstrated adequate stability across the plausible range of pH conditions found in landfills to ensure that mercury would not leach from the treated high mercury hazardous waste if land disposed. Additionally, other factors, such as leachate salinity, can significantly affect the solubility of mercury from treated wastes. As a result, the Agency concluded that reclamation of elemental mercury from D009 and U151 hazardous wastes for placement into commerce remained the most reliable approach for managing high mercury waste in a manner that is protective of human health and the environment. The EPA also stated that site-specific environmental conditions may be addressed in a petition for a site-specific variance from the applicable treatment standard that prohibits land disposal of elemental mercury.

Currently there are international treatment and disposal options for the land disposal of elemental mercury that appear to address the concerns with land disposal that the Agency identified. Because of the international disposal options, some domestic companies, such as Bethlehem

Apparatus, do treat elemental mercury for export and disposal.

On January 16, 2025, DOE published a request for information regarding treatment and disposal of elemental mercury (90 FR 4728) indicating ongoing need and interest for treatment and disposal alternatives.

E. Why is a treatability variance necessary for elemental mercury extracted from high mercury wastes?

The EPA continues to find that recovering elemental mercury from high concentration mercury waste is appropriate because there are no identified treatment and disposal options for such wastes in the U.S. prior to incineration or retort/recovery that ensure adequate protection of human health and the environment. However, the EPA also finds that it is inappropriate to leave placement into commerce of elemental mercury the only final disposal option because there is no commercial market for elemental mercury. The Agency therefore concludes that a treatment and land disposal option is appropriate if a petition can demonstrate that the alternative treatment standard will substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized. Specific to mercury, as noted in the 2003 Notice, the petition for a variance must demonstrate that the treatment is effective under planned disposal conditions for the expected pH range for the disposal site and it must describe the specifics and likely effectiveness of the stabilization treatment to be used, among other things.

IV. Description of the Treatment and Disposal Approach in the Petition

On June 30, 2021, USE submitted a petition for a Determination of Equivalent Treatment under 40 CFR 268.42(b) to treat and dispose of elemental mercury reclaimed from the retort of D009 and U151 high mercury wastes. In response to EPA requests following the original June 2021, submission, on September 22, 2025, USE provided supplemental information and a revised petition, including a separate request for the Agency to evaluate the treatment process as a site-specific treatability variance pursuant to 40 CFR 268.44. Additional communication with USE led to the Agency proposing to include Bevill-exempt wastes from U.S. gold mining operations to the petition. The original and revised petitions and associated responses to Agency

information requests (together referred to as “the petition”) can be found in the docket (EPA–HQ–OLEM–2025–2038).

A. Treatment Process

The petition includes the conclusions of a study of a process for treating and stabilizing elemental mercury reclaimed from high mercury wastes that will minimize the risk of mercury release from the treated waste and allow for land disposal. USE has an existing agreement with Bethlehem Apparatus to perform the treatment portion of this process. Bethlehem Apparatus is permitted to treat/recycle mercury-bearing wastes through distillation to generate elemental mercury in the manner provided in their permits by the Commonwealth of Pennsylvania pursuant to its approved RCRA Subtitle C program. Visit Pennsylvania’s DEP website to locate Bethlehem Apparatus’s permits at https://www.ahs.dep.pa.gov/eFACTSWeb/searchResults_singleAuth.aspx?AuthID=16767. Bethlehem Apparatus also exports such treated elemental mercury for disposal. The Bethlehem Apparatus process post-RMERC includes: (1) conversion of distilled and retorted high-purity elemental mercury into a stable form of mercury sulfide (HgS) powder by reaction without significant excess sulfur through a patented proprietary process (U.S. Patent Nos. 7,691,361 and 8,501,107); (2) blending the HgS powder with melted linear low-density polyethylene (LLDPE) under a proprietary process with defined parameters under vacuum; and (3) extruding the LLDPE-HgS blend as a monolith (hereafter referred to as “HgS waste”) directly into Department of Transportation (DOT)-rated nonreactive container (such as high density polyethylene (HDPE)) closed-head drums). Bethlehem Apparatus is required to conduct all portions of the treatment in compliance with its air and RCRA permits issued by Pennsylvania. All containers used to transport the HgS waste offsite from Bethlehem Apparatus to USE’s Beatty, Nevada facility must meet all applicable DOT requirements under 49 CFR subchapter C.

B. Disposal Environment

For final disposal, USE must construct a designated HgS hazardous waste (Subtitle C) monofill at its Beatty, Nevada facility, in compliance with its RCRA permit, where leachate generation is expected to be minimal due to its location in an arid environment.

Controlling variable environmental conditions that may influence mercury leaching from HgS waste is a critical part of the petition for a variance. USE’s

proposed monofill must only accept HgS waste treated by the process described in this proposal and USE’s September 22, 2025, petition, subject to the conditions summarized in section VI., Conditions for Treatment and Disposal of HgS Wastes, of this proposal. The proposed monofill disposal site is located within an existing RCRA Subtitle C permitted facility in an arid environment in Beatty, Nevada, with an average annual rainfall of less than seven (7) inches per year. This location limits the potential impacts of rainwater to the disposal site by lowering the potential for leachate generation. Disposal in a segregated monofill reduces potential infiltration from other portions of the facility and the introduction of other contaminants or minerals from rainwater that may negatively influence mercury leachability. For these reasons, the EPA has determined that the proposed monofill location will minimize the potential for mercury migration or leaching from the treated waste. Additionally, the nearest residence is located approximately eleven (11) miles from the site, a safeguard against potential human interference or interaction with the disposal site.

The Nevada Department of Environmental Protection (NDEP) regulates hazardous waste pursuant to Nevada Administrative Code (NAC) and the Nevada Revised Statutes (NRS), as a State authorized to implement a hazardous waste program under the RCRA. As such, prior to construction of the monofill and acceptance/disposal of any HgS waste at the Beatty, Nevada facility, USE must obtain all necessary permits and permit modifications from NDEP.

The proposed monofill must meet, at a minimum, all Subtitle C standards and requirements imposed by NDEP. The approval of this variance application does not limit the delegated RCRA authority of NDEP to establish design and permitting conditions. Nothing in this document authorizes the disposal of HgS waste from the process described in this proposed approval at any portion of the facility other than the designated monofill that must be approved and permitted by NDEP. In addition to all applicable RCRA requirements of 40 CFR parts 260–271 and corresponding state regulations, EPA herein requires USE to meet those specific conditions described in section VI. below, to retain this variance.

V. Basis for EPA’s Proposed Determination To Approve

EPA evaluated both the proposed treatment and the disposal methods for

reclaimed elemental mercury in USE's petition to determine whether they will minimize threats to human health and the environment consistent with RCRA and the EPA's statutory mandates and existing regulations. As explained further below, the Agency's evaluation of the proposed treatment approach agrees that the petition demonstrated that the concentration of mercury that leached from LLDPE encapsulated HgS monoliths is significantly lower than the Agency's most stringent established LDR standard of 0.025 mg/L TCLP for land disposal of mercury waste. Further, the potential for mercury leaching from LLDPE-encapsulated HgS monoliths was evaluated before those monoliths were encased in non-reactive containers, and therefore the potential for mercury leaching once disposed in USE's monofill within the containers is further reduced.

In addition, the evaluation of the proposed disposal site supports the Agency's preliminary determination to approve the variance. The proposed site is a monofill dedicated to disposal of HgS waste with a separate leachate collection system that should both prevent migration of mercury and allow for long-term evaluation of the effectiveness of the treatment because if any mercury is detected in the monofill leachate system, it will have a known source.

For these and other reasons discussed below, EPA is proposing to approve a site-specific treatment variance for the land disposal of treated elemental mercury in Beatty, Nevada, as described in the USE petition, subject to the additional conditions set forth below in section VI.

A. Evaluation of the Proposed Encapsulation Process

EPA undertook a study to validate LEAF analytical data results generated by USE's contract laboratory, Eurofins, for one of the waste forms and to ensure the results were reproducible. Additionally, EPA performed leaching experiments on one of the LLDPE-encapsulated HgS waste forms using backfill soil collected from USE's proposed HgS waste monofill area to determine what effect, if any, leaching solution composition might have on mercury mobility.

USE engaged the EPA early in the process while compiling the original petition and remained engaged with the Agency throughout the process of data validation and leaching confirmation. The result of this engagement saw the final form of the treated waste replace USE's originally proposed process that extruded LLDPE-HgS into pellets and

then placed the pellets into a closed-head HDPE drum. A summary of the results of both the EPA's validation study and USE's confirmatory sampling are presented below. Detailed methods and results of the EPA verification study, which includes data sets from USE's contract laboratory are in the docket for this action (EPA-HQ-OLEM-2025-2038) within the document titled Evaluation of the Leaching Potential of Mercury from Polyethylene-Encapsulated Mercury Sulfide Material for Disposal.

The EPA determined that it is necessary for the HgS waste to be disposed of in a Subtitle C monofill and be subject to the most stringent existing concentration-based LDR standard of 0.025 mg/L TCLP for mercury-containing nonwastewater. Further, USE is required to verify, at least quarterly as specified in section VI. below, that mercury leaching will not exceed 0.025 mg/L using the SW-846 LEAF method 1315 with modifications appropriate for mercury to estimate flux from the HgS waste and, assuming a 20-to-1 liquid-to-solid ratio and 18 hour leaching timeframe, to compare directly to the 0.025 mg/L LDR standard based on the traditional Toxicity Characteristic Leaching Procedure (TCLP) (U.S. EPA SW-846, EPA Method 1311). Refer to EPA document "Summary Document" in the docket for details.

1. Leaching Testing Method Selection and Data Verification Process

Leaching tests are the primary and most widely used indicator for evaluating the contaminant retention capacity of a solid matrix. Because this proposed alternative treatment process would result in much higher concentrations of mercury potentially being land disposed than currently exists, and because of the toxic nature of mercury, EPA required USE to perform a range of aqueous leaching tests on HgS waste using LEAF methods 1313, 1314 and 1315 in addition to TCLP (method 1311) as part of the petition review process. These additional leaching tests included evaluation of pH-dependence of mercury leaching and evaluating dynamics of leaching behavior from HgS powder and LLDPE-encapsulated HgS waste forms.

The LEAF methods provide a more robust and accurate assessment of contaminant leaching behavior than TCLP because LEAF considers a range of environmental conditions and waste form properties and thereby facilitates management scenario-specific evaluation of potential constituent leaching. In contrast, TCLP was

developed only to evaluate co-disposal with municipal solid waste as a plausible mis-management scenario, which is a disposal scenario not being considered for the HgS waste. See 55 FR 11798, March 29, 1990, for more information on the TCLP, noting that TCLP was originally developed to assess the plausible, worst case mismanagement scenario for evaluating industrial waste co-disposed in a municipal solid waste landfill. Although more extreme pH conditions have been observed in landfills, a historic compilation of landfill data indicates that approximately 95 percent of all hazardous waste landfills fall within the 2 to 12 pH range, with more than 90 percent being less than pH 10. See 65 FR 37945, June 19, 2000. In addition to meeting the 0.025 mg/L LDR standard by TCLP, EPA determined that quarterly verifications would also be required for the first two years and annually thereafter that diffusion of mercury from the LLDPE-encapsulated HgS waste form would continue to meet the LDR standard of 0.025 mg/L using LEAF method 1315 with modifications described in the document titled Evaluation of the Leaching Potential of Mercury from Polyethylene-Encapsulated Mercury Sulfide Material for Disposal in the docket. This additional testing is appropriate to ensure consistency of the integrated process for transforming elemental mercury into water-insoluble HgS and encapsulation in LLDPE and to ensure mercury leaching behavior continues to meet the performance standards during evaluation of their petition for disposal in case site conditions at USE's monofill fluctuate in future decades.

Leaching experiments were conducted on three waste forms of HgS for a total of eight (8) experiments to compare the "worst case scenario" leaching potential of unencapsulated HgS powder with the leaching potential of two forms of LLDPE-encapsulated HgS.

2. Summary of Key Findings From Leaching Experiments on HgS Waste Forms

Below is a summary of the methods and results of all experiments performed in the document titled Summary of HgS-Leaching Experiments Conducted by USE and EPA ("Summary Document") located in the docket for this proposal. The following key findings are excerpts from that document for tests on three different states of HgS—unencapsulated powder, LLDPE encapsulated pellets, and LLDPE encapsulated monoliths.

a. Waste Form 1—Unencapsulated HgS Powder

HgS powder is elemental mercury that has been retorted and redistilled and then converted to HgS in a batch process by introducing it into a computer-controlled mixing oven and heating with a slight stoichiometric excess of elemental sulfur, depositing solid, crystallized HgS on the surface of the drum inside the oven that was scraped and collected as a fine powder.

USE conducted aqueous leaching experiments on Waste Form 1 that included TCLP testing by method 1311 and column leaching tests by LEAF Method 1314, both of which were run on four (4) samples of this waste form derived from three (3) separate batches. Half of the TCLP results exceeded the 0.025 mg/L LDR standard, with a maximum concentration of 0.045 mg/L. The maximum cumulative release of mercury per unit mass of the waste across all method 1314 column tests and integrated over all leaching intervals up to a liquid-to-solid ratio of 10 L/kg was 0.24 mg/kg. This release corresponded to a hypothetical mercury concentration of 0.024 mg/L at the 20 L/kg liquid-to-solid (L/S) ratio used for TCLP (see supporting document for details), which was just below the LDR standard.

Mercury concentrations also exceeded 0.025 mg/L at one or more leaching intervals in two of the four column tests. Based on the limited aqueous leaching data provided for this waste form, it would be unlikely to consistently meet the LDR standard of 0.025 mg/L for mercury by TCLP.

b. Waste Form 2—LLDPE-Encapsulated HgS Pellets (Pellets)

HgS pellets are HgS powder that is mixed with melted LLDPE encapsulating reagent in approximately a 1:6 ratio, after which it is extruded through a dye and cut into roughly spherical pellets approximately 3–4 mm in diameter.

USE conducted TCLP testing using method 1311 on 20 samples from four (4) separately produced batches of this waste form. None of the tested samples exceeded the 0.025 mg/L LDR standard for this waste form, and only one of the 20 results exceeded half of the LDR standard. USE and EPA also conducted 17 column tests using method 1314 on four (4) separately produced batches of this waste form. The maximum mercury release across all column tests and integrated across all leaching intervals up to a L/S ratio of 10 L/kg was 0.041 mg/kg. This release corresponded to a hypothetical mercury concentration of 0.0041 mg/L at the 20 L/kg L/S ratio

used for TCLP, which was less than 20% of the LDR standard. The mercury concentration only exceeded the 0.025 mg/L LDR standard in one leaching interval in one (1) column test (one (1) result of a total of 152 aqueous column eluate samples tested across these column experiments). Collectively, these leaching experiments demonstrated that this waste form would be likely to consistently meet the 0.025 mg/L LDR standard for mercury by TCLP.

USE and EPA conducted additional pH-dependent batch leaching tests by Method 1313 on this waste form and observed that aqueous leaching of mercury increased at alkaline pH ($\text{pH } 7 < \text{pH } 9 < \text{pH } 10.5 < \text{pH } 12$). Average mercury concentrations were 0.003–0.008 mg/L at pH 3–5 ($n=4$), 0.0014 mg/L at pH 7 ($n=10$), 0.012 mg/L at pH 9 ($n=10$), 0.027 mg/L at pH 10.5 ($n=10$), and 0.051 mg/L at pH 12 ($n=10$). These results indicated that the mildly acidic pH used for TCLP testing would likely not represent the worst-case disposal scenario for this waste form. For reference, USE reported aqueous pH in the range of 8.3–9.4 for water in contact with backfill soil excavated from the proposed disposal site.

EPA conducted additional column tests by Method 1314 on this waste form in the presence of backfill soil from the proposed disposal site. The columns were configured so that the aqueous leaching solution flowed through the backfill soil and then through the pellets. Column experiments were conducted on three (3) separate batches of pellets, and parallel column tests were performed contemporaneously on the same batches of pellets with no backfill soil. None of aqueous column eluate samples contained mercury concentrations above the laboratory's Lower Limit of Quantitation (LLOQ) in any of the leaching intervals. The maximum mercury release calculated assuming all values were at the LLOQ was <0.0250 mg/kg for column tests with backfill soil vs <0.0248 mg/kg for pellets without backfill soil. No quantifiable increase in mercury release was observed in the column tests with backfill soil and pellets compared to columns tests with only pellets. The hypothetical mercury concentrations in these experiments corresponding to an L/S ratio of 20 L/kg was <0.0025 mg/L after accounting for differences in solution-to-solid ratios in method 1314 relative to method 1311, which was an order of magnitude below the 0.025 mg/L LDR standard for mercury by TCLP.

c. Waste Form 3—LLDPE-Encapsulated HgS Monolith (Monolith)

A HgS monolith is HgS powder that is mixed with melted LLDPE encapsulating reagent in approximately a 1:6 ratio, extruded into a mold and cooled to make cylindrical monoliths that were approximately 5.1 cm diameter x 10.2 cm height. USE conducted semidynamic tank leaching tests by LEAF method 1315 on six (6) replicate monolith samples at nine (9) leaching intervals up to 14 days each, for a total of 63 days. The maximum cumulative release of mercury estimated across all Method 1315 monolith tests and across all leaching intervals was only 3% higher than when all results were below the LLOQ and the mercury concentration in each interval was assumed to be at the laboratory's LLOQ of 0.0002 mg/L. The upper boundary mercury flux estimated from the 1315 tests and assuming that results below the LLOQ of 0.0002 mg/L were at the LLOQ was $2.4 \times 10^{-6} \text{ (mg)(m}^2\text{)}^{-1}\text{(sec)}^{-1}$, or $0.21 \text{ (mg)(m}^2\text{)}^{-1}\text{(day)}^{-1}$. For the LLDPE-encapsulated HgS monoliths that were tested (cylinders ~10.2 cm height x 5.1 cm diameter, with a nominal mass of 0.26 kg, volume of 0.00021 m³, and surface area of 0.020 m²), the hypothetical mercury concentration in an aqueous solution in contact with the monolith at an assumed 20 L/kg L/S ratio and 18-hour leaching interval used for TCLP extraction was 0.00016 mg/L, which is more than two orders of magnitude below the 0.025 mg/L LDR standard. This hypothetical concentration would decrease further as the size of the monolith is scaled up due to corresponding decrease in surface area-to-volume ratio.

3. Experiment Conclusions

Overall, the USE and EPA studies³ characterized the release of mercury and major ions from LLDPE-HgS pellets alone and in contact with porewater from backfill soil and the release of mercury and major ions from HgS monoliths. Analysis of the batch testing samples from the pellets showed leaching of mercury throughout the varying liquid to solid column ratios (L/S), *i.e.*, volume of eluant per unit mass of the solid; however, the concentration of mercury in column eluates remained less than the LDR treatment standard of 0.025 mg/L. The

³ See USE 7/2021 petition for leaching studies of HgS powder and LLDPE-HgS pellets. See USE 9/22/2025 petition for leaching studies of LLDPE-HgS monoliths. EPA studies are found in Evaluation of the Leaching Potential of Mercury from Polyethylene-Encapsulated Mercury Sulfide Material for Disposal in the docket.

presence of backfill soil in the columns did not result in a quantifiable increase in mercury release. Comparison of EPA Method 1314 results to Eurofins' results showed some variation in the concentration of mercury in eluate throughout testing, though most data points remained less than the comparable LDR treatment standard. The leaching of mercury from the pellets throughout all experimentation may be indicative of an inconsistent polyethylene encapsulation, which could be due to swelling of the pellets, cracking the coating, variations in polyethylene thickness during the production of the pellets, or inconsistencies in washing of the pellets during production.

Imaging of the pellets through both optical microscopy and scanning electron microscopy/energy dispersive X-ray spectroscopy (SEM/EDS) also indicated a change in the polyethylene encapsulation of the pellets, with cracks in the polyethylene shown in the optical microscope images of post-column testing pellets and a higher exposure of mercury particles shown in the wet pellet images on SEM/EDS.

The monolithic form of the polyethylene HgS material showed minimal release of mercury throughout Method 1315 testing. Overall, the initial flux of mercury was less than $2.4\text{E-}6$ mg/m²/sec (0.21 mg/m²/d), and a maximum cumulative release less than 0.16 mg/m² when assuming the LLOQ for leaching results measured at less than the LLOQ. The monoliths had minimal mercury release throughout testing, indicating that USE's proposed alternative treatment process using the monolithic form is a viable option for treatment and disposal of elemental mercury stores under the site-specific conditions evaluated and established in this proposed approval. Additional calculations to compare the Method 1315 cumulative release to TCLP conditions indicate that the comparative concentration of mercury from Method 1315 results would be more than two orders of magnitude less than the concentration of mercury set by LDR limits. This comparison supports the viability of LLDPE HgS monoliths as a treatment technique for elemental mercury.

B. Bases for Proposed Approval of USE' Petition for Variance

Pursuant to 40 CFR 268.44(h), the EPA is proposing to approve USE's variance to allow for the land disposal of treated elemental mercury at their Beatty, Nevada facility. The Agency finds that the existing treatment standard is inappropriate because it

requires that elemental mercury recovered from retorting of D009 and U151 high mercury wastes or Bevill exempt wastes from the U.S. gold mining industry be reentered into commerce and prohibits land disposal, but there is no market for elemental mercury. Instead, it is being accumulated at treatment facilities around the country. The continued storage of elemental mercury in its natural liquid form poses an ongoing potential hazard to human health and the environment. See 40 CFR 268.44(h)(2)(i) requiring a petitioner demonstrate that the specified treatment is technically inappropriate, even though it is technically possible. The Agency further concludes that the treatment and disposal approach proposed in this action will minimize threats to human health and the environment posed by land disposal. Further, the Agency finds that USE's proposed approach is more effective at minimizing threats to human health and the environment than the existing LDR standard requiring elemental mercury be reentered into commerce because there is no market for it, and it is being stored indefinitely throughout the country.

As explained above, the existing LDR regulations require non-organic containing high mercury waste be treated via RMERC to recover elemental mercury so that the potential leachable concentration of mercury in the RMERC residue wastes, considered low mercury wastes, do not exceed regulatory leachate levels of 0.20 mg/L, as measured by the toxicity characteristic leaching procedure (TCLP). While subject to treatment to prevent leaching of mercury, low mercury wastes may be land disposed in a designated Subtitle C landfill. However, the regulations require the recovered elemental mercury to be reentered into commerce because at the time the regulations were established there was both a domestic and an international market for elemental mercury. Domestic demand for mercury fell by more than 75% from 1988 (1503 metric tons) to 1997 (346 metric tons), because environmental concerns led to both voluntary and regulatory reductions in the use of elemental mercury. For example, mercury was eliminated as a paint additive and the use of mercury in batteries was reduced. Other factors contributing to this decline in the domestic market include the military phase-out of mercury fulminate as a primer in explosives and the decreasing number of chlor-alkali facilities using the mercury cell method for chlorine

production. With respect to the international market, MEBA and the Lautenberg Acts have virtually eliminated the international market for elemental mercury recovered from high mercury wastes. For these reasons, the EPA finds that the existing requirement to place elemental mercury into the market is technically inappropriate and that the proposed treatment alternative is appropriate, allowing for the land disposal of elemental mercury in a manner that is protective of human health and the environment.

The EPA also finds that the disposal environment in Beatty, Nevada is appropriate for the long-term disposal of HgS waste as treated via existing agreement between USE and Bethlehem Apparatus. The disposal location is critical because environmental factors can significantly affect the solubility of mercury from treated wastes and the leaching studies the EPA performed considered the proposed disposal environment. USE must dispose of HgS wastes in a monofill located in an arid environment to limit potential interaction of differing wastes and control contaminant interactions. The monofill will also have an independent leachate collection system to further prevent interaction or migration of waste from the unit.

For all these reasons, EPA finds that the conversion of elemental mercury from RMERC to HgS powder and subsequent blending of the HgS powder with LLDPE and extrusion in monolithic form into non-reactive containers, under the terms of the proposed variance, will minimize threats to human health and the environment posed by land disposal of elemental mercury waste. The EPA finds that the disposal site location and environmental conditions (*i.e.*, in a monofill with an observed pH between 8.3 and 9.4) further support a conclusion that approval of this variance with conditions listed in section VI., below, will minimize the threats to human health and the environment from land disposal of treated elemental mercury. Moreover, the EPA concludes that the studies confirm that the method of proposed treatment of elemental mercury reduce its volatility and solubility/leachability and that it is thus appropriate for long-term management in the proposed disposal environment.⁴ To ensure proper treatment and disposal continues after the variance is issued, the EPA is

⁴ In the 2003 Notice of Data Availability (68 FR 4482) the EPA specified these demonstrations for treated waste that petitions related to high mercury waste must meet above and beyond a standard treatability variance.

requiring specific measures that must be put into place to prevent the treated HgS waste from being degraded after treatment, during transportation, and after disposal in the monofill.

For all these reasons, pursuant to 40 CFR 268.44(h), the EPA is proposing to approve a site-specific variance for elemental mercury recovered from high mercury wastes as treated via existing agreement between USE and Bethlehem Apparatus, to be disposed of in a monofill in USE's Beatty, Nevada Subtitle C landfill, subject to the conditions in section VI., below.

VI. Conditions for Treatment and Disposal of HgS Wastes

In addition to the alternative treatment protocols identified in section IV. of this proposed approval and further detailed in USE's September 22, 2025, petition, USE must adhere to the following conditions.

1. Prior to construction of the monofill and acceptance/disposal of any HgS waste at the Beatty, Nevada facility, USE must obtain all necessary federal, state and local permits.

2. For HgS waste, USE must meet the concentration based LDR standard of 0.025 mg/L using TCLP, Method 1311; however, USE must also conduct periodic confirmation testing on two (2) batches at least quarterly for the first two (2) years and annually on two (2) batches thereafter of the HgS waste using the most recently approved revision of LEAF Method 1315 with modifications appropriate for mercury (See EPA "Summary Document" in the docket for details) to confirm continued compliance with the concentration-based LDR standard of 0.025 mg/L. Additional confirmation testing may be established by NDEP as part of the permitting process.

3. To confirm that excess mercury is not present in the HgS powder prior to blending with LLDPE, for at least one (1) of every twenty (20) batches of HgS powder destined to be blended with LLDPE and disposed at the Beatty, Nevada facility, USE must request that Bethlehem Apparatus provide analytical data to the EPA.

4. HgS waste must be disposed within a permitted Subtitle C monofill at the USE Beatty, Nevada TSD facility.

5. Disposal of HgS waste at the Beatty, Nevada monofill is predicated on compliance with USE's Subtitle C

permit conditions for the treated HgS waste.

6. The mercury waste management facilities, including any waste treatment, storage or disposal areas, must be designed and constructed such that the containment system, leachate management system, stormwater collection and control system, and future cover and closure systems are independent of other environmental control systems for the facility. The stormwater control systems for the mercury waste management facilities must not allow stormwater run-off to or run-on from other waste management units and must be designed to contain at least the water volume resulting from a 24-hour, 100-year event. This condition must be met during the life of the facility for operation, closure, and post-closure periods.

7. Leachate from other portions of the facility must not be used for dust suppression at the monofill. Leachate from the monofill itself may only be used for dust suppression if the leachate collected from the monofill is analyzed and does not contain any hazardous constituents.

8. Unless a Future Amendment to this variance is approved as described in section VII., below, USE can only accept HgS waste as treated via existing agreement between USE and Bethlehem Apparatus.

VII. Future Amendments to This Variance

Prior to the acceptance of HgS powder or HgS waste at the Beatty, NV facility from any facility other than Bethlehem Apparatus's Hellertown, Pennsylvania location, USE must submit a request for a modification of this variance through a revised petition submitted pursuant to 40 CFR 268.44 for approval by the EPA. To ensure such a process change does not alter the performance of the treatment process for HgS waste, the following steps are required for the Agency to determine that the process and treatment residuals are equivalent to those analyzed for this variance.

A. If USE proposes to use an alternate vendor for conversion of elemental mercury to HgS powder that will then be blended into LLDPE and extruded into a monolith, USE must:

1. Ensure any alternate vendor has secured all necessary permits for such treatment processes from state and federal regulators.

2. Demonstrate and receive approval from EPA that the conversion process is equivalent to the Bethlehem Apparatus process. The demonstration must detail equivalency for the following process controls: type of equipment used, conversion temperature, color of the HgS powder, type and quantity of sulfur added for reaction completion without significant excess sulfur, external environmental conditions at the time of conversion (humidity and temperature), control of mercury losses through volatilization and residual concentrations of other mercury species. If any process controls differ from the Bethlehem Apparatus process, USE must submit such revisions to EPA for approval and request a technical meeting to discuss such revisions with the Agency prior to receiving HgS waste from the alternate vendor.

3. Provide third-party analysis from at least five (5) samples of HgS powder from different batches to the EPA. The analysis must demonstrate that leaching does not exceed 0.025mg/L using TCLP and EPA Method 1315 with modifications appropriate for mercury.

B. If USE proposes to move the LLDPE-HgS blending and extrusion process from Bethlehem Apparatus to its Beatty, NV facility, USE must:

1. Secure all necessary permits for such treatment processes from state and federal regulators.

2. Demonstrate and receive approval from EPA that the blending and extrusion process is equivalent to the Bethlehem Apparatus process. The demonstration must detail equivalency for the following process controls: type of equipment used, temperature of the blending and extrusion process, residence time of HgS in the mixing chamber, mixing speed, external environmental conditions at the time of blending (humidity and temperature) and control of mercury losses thorough volatilization. If any process controls differ from the Bethlehem Apparatus process, USE must submit such revisions to the EPA for approval and request a technical meeting to discuss such revisions with the Agency prior to commencement of the treatment process.

3. Provide third-party analysis of at least three (3) samples of the treated LLDPE-HgS monolithic waste using TCLP and EPA Method 1315 from different batches of HgS powder.

TABLE 1—PROPOSED MODIFICATION TO 40 CFR 268.44(o) FOR THE HIGH MERCURY WASTE TREATMENT PETITION

Facility name and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L)	Notes	Concentration (mg/kg)	Notes
Wastes Excluded from the Treatment Standards Under § 268.40							
US Ecology Nevada, Inc. Beatty, Nevada	D009, U151 ²¹	NA	Mercury	NA	NA	0.025 mg/L TCLP	(^{22 23})

²¹ The waste codes included in this column are only for those mercury wastes identified as the high mercury subcategory in 268.40.

²² This site-specific treatment standard applies only to elemental mercury resulting from RMERC of D009 or U151 high mercury subcategory wastes containing greater than or equal to 260 mg/kg mercury treated via the approved alternative treatment method described in EPA-HQ-OLEM-2025-2038. This alternative treatment method converts elemental mercury post-RMERC to mercury sulfide powder and blends the mercury sulfide powder with linear low-density polyethylene and extrudes the mixture as a monolithic block directly into a nonreactive container.

²³ Disposal of elemental mercury resulting from RMERC of D009 or U151 wastes that have complied with the alternative treatment standards identified in note 22 must be disposed within a permitted Subtitle C monofill at the US Ecology Beatty, Nevada facility. The monofill must be hydraulically segregated from other disposal units at the facility. Leachate must not be used for dust suppression at the monofill, including leachate from the monofill itself. This treatment variance does not relieve US Ecology of its responsibilities in the management of hazardous waste under 40 CFR parts 260 through 271. This treatment variance is conditioned on US Ecology's complying with section VI. Conditions for Treatment and Disposal of HgS Wastes detailed in EPA-HQ-OLEM-2025-2038.

VIII. Statutory and Executive Order Reviews

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

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

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is expected to be an Executive Order 14192 deregulatory action. This proposed rule is expected to provide burden reduction by replacing an unachievable LDR standard that led to the requirement for indefinite storage of high concentration mercury wastes by DOE. The proposed site-specific LDR standard would allow for the treatment and disposal of high concentration mercury wastes.

John W. Busterud,

Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2026-02346 Filed 2-5-26; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 260120-0031]

RIN 0648-BN00

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Fixed Gear Marking and Entanglement Risk Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would implement gear marking requirements and entanglement risk reduction measures for portions of the Pacific coast groundfish fishery. This rulemaking will consist of mandatory requirements and voluntary measures. These new requirements and voluntary measures will be established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The intent of the gear marking requirements is to increase the likelihood of attributing entanglements to a specific fishery and gear type. The intent of the risk reduction measures is to reduce bycatch by decreasing the likelihood of marine animal entanglements with fishing line. NMFS requests public comment on these proposed requirements and voluntary measures.

DATES: Comments must be received no later than March 9, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0045>. You may submit comments on this document, identified by NOAA-NMFS-2024-0045, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NMFS-2024-0045 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov>

without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

- Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS West Coast Region and to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. An initial regulatory flexibility analysis was prepared and is available on the Pacific Fishery Management Council website at <https://www.pcouncil.org>.

FOR FURTHER INFORMATION CONTACT:

Gretchen Hanshew, Fishery Management Specialist, at 206-526-6147 or gretchen.hanshew@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule includes gear marking requirements and entanglement risk reduction measures for portions of the Pacific coast groundfish fishery. These proposed measures are consistent with the authority provided through the Magnuson-Stevens Act section 303(a)(11) for conservation and management measures that, to the extent practicable, minimize bycatch; and with the authority provided at MSA section 303(b)(4) for measures that allow for prohibiting, limiting, conditioning, or requiring use of specified types of fishing gear. The framework for gear definitions and restrictions is described in the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) in Section 6.6, which notes that gear definitions

and restrictions may be revised through a rulemaking process. Additionally, section 6.10.3 of the PCGFMP authorizes gear identification requirements, and provides that these requirements may be modified as necessary in Federal regulations. This rulemaking will consist of new mandatory requirements and voluntary measures and is proposed to be promulgated pursuant to the Magnuson-Stevens Act Section 303(c) and 304(b)(1)(A). The intent of the gear marking requirements for buoys and portions of lines is to increase the likelihood of attributing entanglements to a specific fishery. The intent of the risk reduction measures is to reduce bycatch by decreasing the likelihood of marine animal entanglements with fishing line. NMFS is proposing this rulemaking, in part, in response to increased rates of entanglement of humpback whales with Pacific coast fishing gear since 2014. This proposed rule also clarifies requirements regarding the position of escape panels on pot gear to prevent the escape panel from being on the bottom of the pot and promote similarity in escape panel requirements with Federal groundfish pot fisheries off Alaska. This rulemaking also proposes clarifications in longline regulations throughout 50 CFR part 660 for consistency with Council recommendations proposed in this rulemaking.

This proposed rule is based on the Council's final recommendations for gear marking and entanglement risk reduction made at its June 2024 meeting in San Diego, CA. In developing the recommended measures, the Council considered the results of a 2022 workshop with the groundfish fishing industry, "Improving Gear Marking in the U.S. West Coast Sablefish Pot Fishery", as well as reports from its advisory bodies and public testimony.

Pursuant to MSA section 303(c)(2), the Council deemed the proposed regulations necessary and appropriate to implement these actions in a December 20, 2024, letter from Council Executive Director, Merrick Burden, to Regional Administrator Jennifer Quan. The proposed modifications to the regulations implementing the PCGFMP are consistent with the authority provided in the PCGFMP sections 6.6 and 6.10.3 for gear restrictions being described in regulation. We are seeking comments regarding whether vessel identification may be more legible on buoys compared to gear-specific tags, and, if more legible on buoys, whether there are logistical difficulties with painting or writing the vessel identification on each buoy. We also

seek comments regarding the proposed information collection and the accuracy of our burden hour and cost estimates.

A. The Needs and Scope of This Rulemaking

Marine mammals and turtles are known to become entangled in fishing gear, which can impede foraging or cause serious injury or death to the entangled animal. Though relatively rare, the marine species most often observed entangled in the Pacific Coast groundfish fishery is humpback whales (*Megaptera novaeangliae*). For this reason, we expect measures in this proposed rule to be most likely to have a positive effect on humpback whales, and therefore discuss this species in greater detail. In recent years since 2014, total instances of entanglement of humpback whales, including both listed under the Endangered Species Act (ESA) and non-ESA listed, in fishing gear (or presumed fishing gear) off the U.S. west coast have increased compared to prior years. From 2005–2013 the average number of confirmed entanglements was less than four humpback whales per year. From 2014–2023, there were 223 total confirmed entanglements of humpback whales, an average of over 22 per year. Of those more recent entanglements, in only approximately 48 percent of instances was the fishing gear able to be identified to type and/or attributed to the fishery that was the source of the entangling gear. To continue development of measures that are effective at reducing risk of entanglements, NMFS needs to be able to identify which gear types are entangling protected species. Using this information, NMFS can develop appropriate fishery management actions in federally managed fisheries to mitigate risk of entanglement for protected species.

Harvesters in a variety of West Coast fisheries use fishing gears that pose a risk of entanglement to protected species, including both ESA and non-ESA listed species. In the commercial groundfish fisheries off the coasts of Washington, Oregon and California use fishing gears known to entangle humpback whales, and fish in areas that overlap with humpback whale habitat. Specifically, between 2011 and 2023, there are five known entanglements of humpback whales with sablefish pot gear. Also, within the groundfish fishery, vessels that use bottom longline gear employ surface gear with buoys that also pose risks of entangling protected species. This proposed rule would require gear-specific marking for non-tribal commercial pot and bottom longline gears (as defined at § 660.11)

(collectively referred to hereafter as fixed gear) that are used to harvest Pacific coast groundfish. The goal of this rulemaking is to enable NMFS, during an evaluation of available evidence regarding the source of an entanglement, to either attribute entanglements to bottom longline or pot gear used in the groundfish fishery, or eliminate the groundfish fixed gear fishery as the probable source.

Sablefish pot gear is fished similarly to bottom longline gear; they target similar species in similar times and areas, sometimes on the same trips. When deployed, both are anchored to the bottom, marked at the surface with attached buoys, and often left to sit unattended to catch the target species. Because of their similarity, both gear types could pose a risk of entangling protected species.

Sablefish pot gear is usually fished as a series of baited pots. Multiple pots are attached to a heavy-duty rope (hereafter referred to as the groundline). The series of baited pots attached to the groundline (hereafter string of pots) sits on the seafloor for a period of time and attracts and entraps the target species. The string of pots is deployed and retrieved by the fishing vessels using one or more ropes (hereafter referred to as lines) that attach to each end of the string of pots and extend upwards through the water column to the surface (this line is referred to as the vertical line). The vertical line is attached to one or more buoys that float at the surface. The buoys are used to mark the terminal end(s) of the string of pots so that the location is known by other vessel traffic, and so that the vessel operator can effectively retrieve the gear after it sits for 1–7 days to attract and catch the target species (also called soak, or soak time). Pots may be rigid or collapsible, but both types are required to be fitted with escape panels of a specified minimum size. These escape panels are designed to deteriorate relatively quickly to prevent the pot from entrapping fish indefinitely if the pot is lost at sea. Pot gear generally has a longer soak time than bottom longline, increasing the relative risk of entanglement due to the amount of time the gear is unattended in the water. In addition, pots pose a greater risk of serious injury or mortality when entangling protected species because they are heavier.

Bottom longline gear is comprised of an anchored groundline with multiple hooks attached so as to fish horizontally along the bottom. Similar to strings of pots, as described above, bottom longline employs vertical lines at each terminal end of the groundline with

surface buoys that identify the location of the gear for other vessel traffic and enable fishing vessels to effectively retrieve their gear. Bottom longlines are generally left to soak for 2–48 hours. Longer soak times are not practical because the gear is lighter and is more easily moved by ocean currents over time compared to strings of pot gear, and predators or scavengers can damage or destroy the hooked target species. Vertical lines and surface buoys pose a risk of entanglement while the gear is soaking. Also, if marine mammals were to depredate on the target species hooked on the line, there is a heightened risk that the animal may become entangled in the groundline or vertical line.

B. Gear Marking and Risk Reduction Development Process

In 2020, NMFS issued a biological opinion evaluating the effects of the groundfish fishery on ESA-listed humpback whales in the groundfish fishery. The mandatory terms and conditions from the incidental take statement in that opinion required NMFS and the Council to investigate the feasibility of implementing additional pot gear marking requirements in the groundfish fishery. A virtual online workshop was hosted by Oregon Sea Grant on November 16, 2022 to discuss feasibility of gear marking and risk reduction measures. A summary of the results of that workshop was reviewed by the Council at its March 2023 meeting and further scoping was scheduled for June 2023. At its June 2023 meeting, the Council considered the similarities of pot and bottom longline gears and the groundfish fisheries that use that gear, and the

March 2023 recommendations from NMFS, and expanded the scope of gear marking to include bottom longline gear in addition to pot gear. Then the Council adopted a purpose and need statement and a preliminary range of alternatives at its September 2023 meeting. At its March 2024 meeting, the Council refined the range of alternatives and adopted a preliminary preferred alternative for gear marking and entanglement risk reduction measures. At its June 2024 meeting in San Diego, CA the Council recommended its final preferred gear marking and entanglement risk reduction measures, which are the subject of this proposed rule.

II. Gear Marking

This rulemaking proposes new requirements in the Pacific Coast groundfish fishery for marking all buoys and the top 20 fathoms (fm) (120 feet or 37 meters) of the vertical line used with pot or bottom longline gear. For the first 3 years after the initial effective date of these requirements, temporary marking methods may be used to satisfy the line marking requirements, and thereafter the top 20 fm (37 m) of vertical line must be line manufactured in the designated color schemes. The Council has recommended and NMFS is proposing to require new gear marking requirements for both pot and bottom longline gears used in the groundfish fishery. This will result in two color-coded schemes of gear marking; one for groundfish pot gear and one for groundfish bottom longline gear.

A. New Requirements for Marking Buoys

Buoys have been documented in approximately two-thirds of all

humpback whale entanglement reports, however only about one-third of those buoys had visible and legible marking that could be used to facilitate gear identification. Additionally, in entanglements positively attributed to pot gears in general, it is relatively rare for no buoy to be present. Therefore, the Council recommended gear-specific buoy tags be attached to each surface buoy, with vessel identification information. NMFS proposes, and the Council has deemed consistent with their recommendations, gear-specific buoy tags be attached to each surface buoy and that each buoy have vessel identification, either on the buoy itself or on the tag. The Council's Enforcement Consultants recommended that every buoy tag be engraved, etched, or stamped with a legible vessel identification number; the same identifying number(s) specified in existing vessel identification requirements. Therefore, NMFS is proposing that each tag must have a physical indentation and a contrasting color. NMFS proposes buoy tags on every surface buoy in a gear-specific color (table 1), with a double-sided gear specific shape marked on it, "P" for pot and "L" for bottom longline, and that the vessel identification number be marked on the tag or on the buoy. NMFS is not proposing gear-specific tag shapes, as described below. Tags will be required on every buoy because it is possible that not all buoys would remain connected if the surface gear were to become entangled. Fixed gears that are the subject of this rulemaking are currently required to have vessel identification on at least one buoy in its surface gear, per 50 CFR 660.219 and 319.

TABLE 1—PROPOSED TWO-COLOR LINE MARKING SCHEMES FOR BOTTOM LONGLINE AND POT GEARS

Groundfish gear type	Color A & tag color	Color B	Core color (may be visible on some line types)
Bottom Longline	Brown	Blue	White.
Pot	Orange	Blue	White.

The Council considered gear-specific marks/shapes on the buoys themselves, but it was not recommended because surface lines and buoys are often used to float multiple gear types in a fishing vessel's portfolio of target species. As a result, a vessel may fish multiple gear types and in multiple fisheries, including groundfish, on the same trip. Fishery and gear-specific marks on buoys would require duplicative gear set-ups be on board the vessel. Due to the limitations on storage space, and

reductions in harvest efficiencies to require separate trips, it would be impractical to require fishery and/or gear-specific marks on the buoys themselves. Instead, the Council recommended tags be attached to the buoys, which would achieve the same purpose of allowing NMFS to identify gear involved in an entanglement. NMFS proposes that tags with vessel identification be attached to each and every surface buoy with a gear-specific color and engraved shape for any pot or

bottom longline gear that is deployed in the groundfish fishery. Tags would be required to be made of a material that is durable in ultraviolet and saltwater conditions, such that it retains its general shape and color over time. Tags may be similar to those used to mark cattle on their ears. Buoy tags were recommended because they can be swapped out so that the surface gear set up, including the large buoys used with groundfish gear, can be used to float different gear types. This method would

allow vessel operators to use the appropriate gear-specific buoy tags when needed without having to purchase and carry or store double or triple the number of buoys. A vessel would be required to have compliant tags ready for attaching to each buoy on board the vessel during a trip for which they have declared pot or bottom longline groundfish fishing.

During development of this proposed rule, NMFS' research indicated that there are limited vendors offering the ability to customize engraved tags beyond sequential numbering. Therefore, ordering tags from the manufacturer with vessel identification and gear-specific mark could be challenging, which could force vessel operators to do their own engraving to comply with new rules. This could be a greater time burden than what NMFS has estimated. Also, most vendors have limited tag shapes, and therefore we are not proposing to require a specific tag shape, but a gear-specific color and mark instead. NMFS is seeking public comment for the proposal to allow vessel identification (e.g. U.S. Coast Guard number) on either a gear-specific tag or on the buoy itself. NMFS notes that if only the gear-specific mark (*i.e.*, "P" or "L") were required on the tag, tags could be potentially purchased in bulk quantities, potentially reducing the cost per tag. NMFS also seeks public comment on whether the vessel identification information would be easier to maintain if it was required to be painted on every buoy or required to be engraved on the gear-specific tag attached to every buoy. NMFS notes that we are not proposing to modify the requirement that at least one buoy has the vessel identification legibly marked on it, per current regulations at 50 CFR 660.219 and 319.

New buoy marking requirements in this proposed rule are expected to not only facilitate identification of sablefish pot and groundfish bottom longline gears in an entanglement (positive attribution), but also to enable a determination that unmarked buoys associated with future entanglements would be unlikely to originate from the groundfish fixed gear fishery (negative attribution).

Therefore, the Council recommended and NMFS is proposing to require gear specific tags attached to each buoy with vessel identification when bottom longline and pot gear is deployed in the subject fisheries. When gear is on board the vessel, appropriately marked and colored tags should be on board the vessel and ready to be attached and/or presented to an authorized officer upon request.

B. New Requirements for Marking Lines

Lines have been documented in a majority of entanglements. Available data for known pot gear entanglements suggest that the line involved is most often the surface line and the top 5 fm (2 m) of vertical line. Fixed gears that are the subject of this rulemaking are not currently subject to any line marking requirements.

NMFS proposes requiring two-color, gear-specific color schemes for marking each vertical line deployed in the commercial limited entry and directed open access groundfish fishery for vessels using pot and bottom longline gears. NMFS is proposing that lines must be marked in the specified colors by the manufacturer, with strands in each color, except that temporary methods of marking with the same colors would be allowed for 3 years after the effective date of the final rule.

Length or Distance of Line Marking
NMFS proposes that at least the top 20 fm (37 m) of vertical line be continuously marked. This distance of marking was chosen to balance improved likelihood of entangled gear being the portion of the line that was marked, while also keeping the cost to industry low. Most vessels using fixed gear in the groundfish fishery deploy between two to eight sets of gear per trip in depths up to 600 fathoms (182 m), with two vertical lines per set. Requiring the entire length of vertical lines to be marked would be expensive with manufactured line and time-consuming with temporary marks because of the deep depths fished, and would be expected to provide little incremental increase in likelihood of gear identification because it is relatively uncommon for the bottom of the line or for more than 50 fathoms of line to be present in an entanglement. Additionally, requiring marking of more than the top 20 fm (37m) of vertical line would likely require retrieval of the gear and disruption of fishing to provide enforcement agents the necessary evidence of a vessel's compliance with new gear marking requirements when the gear is deployed.

Methods of Marking and Implementation Timeline

The Council considered the most efficient solutions to maximize compliance with new line marking requirements. Manufactured line in specified color schemes is expected to have the greatest longevity. However, some operators may have difficulties in procuring manufactured line. To increase equity among fishery participants in complying with line

marking requirements in a timely manner, the Council recommended a robust temporary marking scheme that requires continuous, alternating bands of the same colors specified for manufactured line for each gear type on at least the top 20 fm (37 m) of the vertical line. Temporary marking is expected to result in giving operators that face difficulties in procuring manufactured line for any reason time to comply with this proposed rule while still ensuring that the purpose of the rule to improve gear identification in entanglements is still achieved. Alternating marks would consist of colored rope sections that result in a continuous, alternating two-color scheme for each groundfish fixed gear type, as detailed in table 1 below. Each colored band for temporary marks would be required to be greater than 18 inches to 28 inches (46 centimeters to 71 centimeters) of linear rope length. Presence of any color rope, besides white, other than the color scheme shown in table 1 in the top 20 fm (37 m) of the vertical line would be prohibited for vessels fishing for groundfish with these gear types in the limited entry and directed open access groundfish fisheries. NMFS acknowledges that some types of manufactured line are not 100 percent customizable, *e.g.*, they have an inner core color that is necessary and shows through on the outer surface of the line. This core is usually white.

In order to give fishery operators flexibility in complying with this requirement, NMFS is not including in the proposed rule a method or material for applying temporary marks in the first 3 years after the final rule is effective, but in the development of this action the Council discussed multiple ways to achieve the required marking scheme, such as paint or colored tape.

The Council acknowledged the superiority of using manufactured line for gear marking schemes, due to greater consistency and durability in the colors. However, the Council recommended a 3-year allowance for temporary marking methods to be used on existing vertical lines in order to allow operators to defer the cost of line replacement while still complying with the new marking requirements; delay purchasing new manufactured line until their normal line replacement time if that occurs during the 3-year transition period, which could reduce the amount of line in good condition that must be discarded; and/or have an alternative line marking option in case manufactured line in the required color scheme is not available during the first several years of the new marking

requirements. NMFS is proposing a 3-year allowance for temporary line markings because it is expected to allow more equitable gear marking expenses for small operators with low profit margins, reduce waste of usable line, and mitigate for potential disruptions in availability of manufactured line.

Manufactured line can be ordered by the coil; a standard coil is 1200 ft (365.8 meters) and costs approximately \$200–\$500, and custom colors are available at no additional cost. Some manufacturers offer different size coils. Manufactured line may be used to satisfy the marking requirements for groundfish pot and bottom longline gears immediately upon the effective date of a final rule, which NMFS is proposing to be effective January 1, 2026. Manufactured line would be the only compliant marking method beginning 3 years from the effective date of a final rule. Under the proposed rule, manufactured line used in the groundfish fishery for pot or longline gears must have at least the top 20 fm (37 m) consisting of only the two gear-specific colors A and B specified in table 1. Both colors must be used; NMFS recommends that at least one-third of the strands in the rope be one color and all the other strands be the other color required in the gear-specific two-color scheme. Presence of a third color, besides white, is prohibited in the top 20 fm (37 m) to reduce the likelihood of mistaken gear identification for gear that is observed entangled on marine animals. NMFS seeks public comment

on the cost estimates for line and these requirements and recommendations.

C. Summary of Proposed Gear Marking Requirements

Therefore, the Council recommended and NMFS is proposing a requirement for vessels to use fishing gear with the following gear-specific marking schemes (summarized in table 2). The gear marking requirements in this proposed rule would apply to vessels fishing in the limited entry or directed open access groundfish fisheries with bottom longline or pot gear.

Consistent with the Council recommendations, NMFS is proposing that all buoys deployed on limited entry or directed open access groundfish pot surface gear must have gear-specific orange tags attached with a “P” engraved on them in a contrasting color and that every buoy or buoy tag has the vessel identification number on them. Buoys deployed on limited entry or directed open access groundfish bottom longline surface gear would be required to have brown tags attached with an “L” engraved on them in a contrasting color and every buoy or buoy tag would be required to have the vessel identification number on them. Before leaving port on a trip where the vessel is intending to fish groundfish, the vessel would be required to have buoy tags of the appropriate color, and marking on board. There would have to be enough tags for each buoy, and they must be ready to attach to each buoy before the gear is deployed. The

declaration registered for a vessel under the vessel monitoring system, at the time of the inspection by an authorized agent, will determine applicability of gear marking requirements.

The Council recommended and NMFS is proposing that at least the top 20 fm (37 m) of vertical line used to deploy bottom longline or pot gear in the limited entry or directed open access fishery to be continuously marked. Bottom longline vertical lines would be required to be continuously marked in brown and blue. Pot gear vertical lines would be required to be continuously marked in orange and blue. Both colors must be used; manufactured lines should be at least $\frac{1}{3}$ of strands in one color and all remaining strands in the other color, with any other color besides white prohibited in the top 20 fm (37 m). Temporarily marked lines would be required to be gear-specific, two-color alternating, continuous bands between 18–28 inches (46–71 cm) each for a minimum of 20 fm (37 m) at the top of the vertical line.

The Council recommended and NMFS is proposing that manufactured line, and only manufactured line, be used to mark vertical lines for the subject gears and fisheries, beginning three years after implementation of the gear marking requirements described in this proposed rule, which is expected to be January 1, 2029. In other words, temporary markings will no longer satisfy line marking requirements after three years, expected to be December 31, 2028.

TABLE 2—SUMMARY TABLE OF ALL PROPOSED GEAR MARKING AND VESSEL IDENTIFICATION (ID) REQUIREMENTS FOR THE LIMITED ENTRY (LE) AND DIRECTED OPEN ACCESS (DOA) GROUND FISH FIXED GEAR FISHERIES

Portion of gear	Marking	Marking details
Buoy—Pot (LE or DOA), when deployed	Orange tag with at least 1¾ inch tall letter “P” engraved in a contrasting color; vessel ID on tag or buoy.	Tags must be securely attached to each buoy. Tags for any other fishery must be removed.
Buoy—Bottom Longline (LE or DOA), when deployed.	Brown tag with at least 1¾ inch tall letter “L” engraved in a contrasting color; vessel ID on tag or buoy.	Tags must be securely attached to each buoy. Tags for any other fishery must be removed.
Buoy—Pot, On Board the Vessel ¹ (LE or DOA)	Orange tag with at least 1¾ inch tall letter “P” engraved in a contrasting color are on board the vessel; vessel ID on tag or buoy.	Tags must be ready to securely attach to each buoy and presented to authorized officer upon request.
Buoy—Bottom Longline, On Board the Vessel ¹ (LE or DOA).	Brown tag with at least 1¾ inch tall letter “L” engraved in a contrasting color are on board the vessel; vessel ID on tag or buoy.	Tags must be ready to securely attach to each buoy and presented to authorized officer upon request.
Vertical line(s)—Pot, Manufactured (LE or DOA).	At least the top 20 fm is orange and blue manufactured line ² .	Colors other than orange and blue are prohibited on the top 20 fm.
Vertical line(s)—Bottom Longline, Manufactured (LE or DOA).	At least the top 20 fm is brown and blue manufactured line ² .	Colors other than brown and blue are prohibited on the top 20 fm.
Vertical line(s)—Pot, Temporary (LE or DOA) ...	At least the top 20 fm continuously marked in alternating orange and blue. Each color segment should be between 18 and 28 inches long.	Visible line in any other color is prohibited in the top 20 fm. Compliant temporary markings only satisfy marking requirements for 3 years from the effective date of the final rule.

TABLE 2—SUMMARY TABLE OF ALL PROPOSED GEAR MARKING AND VESSEL IDENTIFICATION (ID) REQUIREMENTS FOR THE LIMITED ENTRY (LE) AND DIRECTED OPEN ACCESS (DOA) GROUNDFISH FIXED GEAR FISHERIES—Continued

Portion of gear	Marking	Marking details
Vertical line(s)—Bottom Longline, Temporary (LE or DOA).	At least the top 20 fm continuously marked in alternating brown and blue. Each color segment should be between 18 and 28 inches long.	Visible line in any other color is prohibited in the top 20 fm. Compliant temporary markings only satisfy marking requirements for 3 years from the effective date of this final rule.

¹ NMFS recommends at least ⅓ in one color and the remainder in the other color.

² Vessel declaration includes fishing groundfish with either pot or bottom longline gear.

III. Entanglement Risk Reduction

This section describes proposed voluntary and required management measures used to reduce risk of entanglement of protected species and reduce bycatch. These measures affect the same groups of fishermen subject to gear marking requirements described above that use bottom longline or pot gear in directed groundfish fisheries.

Fishing lines on or near the surface generally poses a higher risk of entanglement compared to fishing gear at deeper depths or on the bottom. Therefore, measures are being proposed that could reduce risk of entanglement with the surface and vertical lines in groundfish pot and bottom longline gears.

For these reasons, the Council recommended and NMFS is proposing to modify the requirement that fixed gear be marked at the surface at both terminal ends, and proposing to limit the amount of surface line connecting buoys.

A. Reducing Surface Gear Requirements

Current regulations at §§ 660.219 and 660.319 require that pot and bottom longline gear be marked at both terminal ends with vertical lines and buoys. As noted above, vertical lines and surface gear both pose a risk of entanglement to protected species. Therefore, allowing vessels to reduce the number of lines in the water may reduce risk of entanglement. The proposed rule would modify the requirement that pot and bottom longline gear be marked at both terminal ends, allowing for the option to mark only one terminal end. This proposed rule would allow vessel operators to use a vertical line and surface gear at one or both ends of their gear, at their own discretion.

For these reasons, the Council recommended and NMFS is proposing to modify the requirement that fixed gear be marked at the surface at both terminal ends. Gear would be required to be marked at the surface on at least one terminal end, with a pole, flag, light, radar reflector and a buoy that is marked with vessel identification, per

current regulations at §§ 660.219 and 660.319.

B. Limiting Surface Line

Surface gear consists of the buoys and the line between them. Surface gear marks the location of the terminal end(s) of strings of pots and longline gear sets and serves as the primary mechanism for retrieving gear. Often, most of the buoys are floating at or near the surface and are spaced along the surface line so as to absorb changes in ocean conditions while the gear is actively fishing. Overall, more line (vertical line plus surface line) needs to be deployed than simply the depth of the water at the location the gear is set. Wind and tidal changes vary the depth of the water where the gear is set. Surface lines need to have enough slack to adjust to these changes in ocean conditions so the buoys are not submerged completely.

If there is more vertical line or surface gear than is necessary for marking and retrieval of the gear, the excess line poses increased risk of entanglement with no tangible benefit to fishermen. Restricting the maximum length of surface gear, measured from the first buoy (or the high flyer) to the last buoy (main buoy), will prohibit excess surface line and reduce risk of entanglement and bycatch of protected species. In public testimony at Council meetings, groundfish fixed gear fishermen who participated said that about 50 ft (15 m) or less of surface line was enough to allow set gear to maintain surface marking buoy(s) with minimal slack line, depending on the depth and location of the set. Surface line restrictions that are too short could cause buoys to fully submerge in certain conditions, rendering the set temporarily or permanently lost. To balance the desire to reduce slack line on the water, while allowing enough line so that gear is not lost with strong tides and currents, the Council recommended a limit for surface line that is 3 meters longer than what some fishermen said was their typical maximum amount of line.

The Council also considered requiring line marking on the surface line. However, for the same reason gear-specific marks on buoys was not feasible, the Council did not recommend gear-specific surface line marking to allow operational flexibilities when a vessel uses the same surface set up to float multiple gear types or in multiple fisheries.

For these reasons, the Council recommended and NMFS is proposing to limit the amount of surface line that may be used between the first and last buoys to 60 ft, or 10 fm (18 m) for every surface gear set up used for groundfish pot and bottom longline gear.

IV. Additional Regulation Changes

Beyond the gear marking and risk reduction measures described above, this proposed rule also includes two additional changes. Pot and trap gears are fitted with a required panel (at §§ 660.230(b) and 660.330(b)) that, if the gear were lost, would biodegrade to create an opening of specified dimensions so that the pot does not perpetually entrap animals. This mechanism is referred to as an escape panel, and is accomplished with an untreated cotton twine that is 100 percent biodegradable. When the twine decomposes the pot has an opening that allows animals inside the pot to escape. The Council considered recommendations of its enforcement consultants to amend pot gear configuration regulations to prohibit pots from having the escape panel on the bottom, which would align regulations more closely with those in effect off the coast of Alaska pertaining to escape panel placement. The enforcement consultants posited that if an escape panel was on the bottom of the pot, resting on the seafloor, the pot would still not open as it biodegrades and animals would continue to be trapped if the pot is lost. Current groundfish regulations give no specificity about the placement of the escape panel. Therefore, the Council recommended and NMFS is prohibiting escape panels from being positioned on

the bottom of pot, similar to regulations off the coast of Alaska. The Council also acknowledged that collapsible pots, a type of pot that is allowed in the subject fisheries, do not have a “bottom” like conventional pots, and would need an exception from this requirement to accommodate this difference in gear configurations.

Additionally, the enforcement consultants and industry recommended that the cotton biodegradable maximum twine size (preventing it from being too thick and biodegrading too slowly) for the Pacific coast groundfish fishery be modified to be the same maximum twine size as required for vessels fishing off the coast of Alaska (*i.e.*, the North Pacific). Currently, cotton twine for the escape panel used for Pacific coast groundfish can be no larger than number 21. In North Pacific fisheries, the cotton twine size to attach the escape panel can be no larger than number 30, a slightly thicker twine than is currently allowed off Washington, Oregon, and California. Some fishermen use the same pots to fish in both regions, and current rules mean that compliant pots used in Alaska (*e.g.*, number 30 twine) are not compliant if used off the coasts of Washington, Oregon, and California because the twine exceeds the maximum twine size of number 21. Twine on the pot escape panels can be replaced to be size-compliant when a vessel moves operations, but there is a cost to doing so. To reduce regulatory complexity and to make pot fishing operations more efficient when harvesting with pots in both regions, the Council considered changes to align maximum untreated cotton twine size between the North Pacific and the Pacific coast fisheries. Some studies show that thicker twine degrades more slowly than thinner twine, but other studies have shown that manufacturing methods and brand of material has a greater influence on degradation time than thickness. Therefore, it is possible that allowing thicker twine in the Pacific coast groundfish fishery could prolong the time lost pot gear has a closed escape panel. However, number 30 twine is only approximately 0.3 mm bigger than number 21 twine, and is the maximum twine size off the coast of Alaska and no concerns have been identified in its degradation time. The overall effect of the change is likely negligible, given the very low rates of gear loss in this Pacific coast groundfish fishery.

For these reasons, the Council recommended and NMFS is proposing in this rulemaking to revise regulations to ensure that escape panels on pot gear are not positioned on the bottom of the

pot, and change the maximum untreated cotton twine size for closing escape panels from “not to exceed number 21” to “not to exceed number 30.”

Also in this proposed rule, NMFS is proposing, technical changes to 50 CFR part 660 to revise relevant regulations regarding longline and bottom longline gears to clarify key gear terminology, so that it is clear exactly what type of longline gear is affected by this proposed rule. Multiple different gear configurations could be considered to be longline across multiple fisheries, however, not all longlines are considered the type of longline gear used in the groundfish fishery and defined in groundfish regulations. In the definition of fixed gear at § 660.11, longline is described as an anchored hook-and-line gear type that is separate and distinct from stationary hook-and-line and vertical hook-and-line. This definition precludes trolled or floating, horizontal longline from being considered longline in the context of fixed gear. Under this definition, longline means bottom longline gear, which is also defined at § 660.11. Currently, in the limited entry fixed gear fishery the only configuration of longline gear that may be used to harvest quotas associated with a longline-endorsed permit is one that meets the definition of bottom longline. However, in most instances throughout groundfish regulations the word “bottom” to describe the configuration of groundfish longline gear has been inadvertently omitted. Therefore, NMFS proposes to replace “longline” with “bottom longline” in the definition of “fixed gear” at § 660.11, throughout regulations pertaining to gear endorsements for limited entry permits at § 660.25, and throughout limited entry fixed gear and open access commercial groundfish regulations, where applicable.

These regulation changes have been deemed by the Council as consistent with their recommendations implemented in this proposed rule.

V. Classification

Pursuant to sections 303(c)(2) and 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an analysis for this action, which address the statutory requirements of the Magnuson-Stevens Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act. The full suite of alternatives analyzed by the Council can be found on the Council’s website at <https://www.pcouncil.org>.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES** section). NMFS is recommending the regulatory revisions in this proposed rule based on its assessment of the net benefits to the Nation of these measures.

Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

For purposes of the RFA (5 U.S.C. 601 *et seq.*) only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses (50 CFR 200.2; 13 CFR 121.201).

All commercial groundfish participants that use bottom longline or pot gears in the limited entry or directed open access fisheries in the EEZ off Washington, Oregon, and California, which are managed under the Groundfish FMP, may be affected by this proposed rule. The proposed gear marking and entanglement risk reduction measures would require the

specified gear marking and surface line limitation described in this rule for non-tribal commercial vessels deploying either gear type. Examples of gears that would not be affected by this rule include select non-trawl gear types (troll gear and commercial vertical hook-and-line gear not anchored to the bottom, such as vertical jig gear or rod-and-reel gear with weights suspended off the bottom).

These proposed prohibitions for using unmarked bottom longline or pot gears would impact all vessels operating in the limited entry fixed gear fishery, gear switchers in the Shorebased Individual Fishing Quota Program (collectively limited entry), and the directed open access fishery using the subject gear types. The proposed marking measures would prohibit using gear marked for other gear types or for other fisheries while vessels are participating in the directed open access and limited entry groundfish fisheries. The proposed entanglement risk reduction measures would prohibit having more than 10 fm (18 m) of line in the surface set up that connects surface buoys. The measures would also allow vessels to use one buoy line instead of being required to use two. In general, implementation of gear marking requirements is expected to lead to improvements to positive or negative attributions to gears and fishery sectors when entanglements occur, which would provide NMFS the ability to target management measures more narrowly and effectively, which may have the potential reduce negative economic impacts of broader measures to reduce entanglements in the future.

From 2019–2023, there were 606 unique vessels that utilized pot or longline gear in the limited entry and directed open access fisheries, with an annual average of 303 unique vessels per year. These vessels are considered those that would be potentially affected by this action. The majority of affected vessels participate in the directed open access fishery. Limited entry nontrawl vessels mostly use bottom longline gear, likely a result of the greater number of longline-endorsed permits compared to pot-endorsed permits in the limited entry fishery. As described in the analysis at section 3.6.2 of the IRFA, an average of approximately 35 vessels utilize both gear types (bottom longline and pot gear)—either within the same fishery sector (e.g., use both bottom longline and pot gear in the directed open access fishery) or across groundfish fishery sectors (e.g., use bottom longline in the limited entry fishery and pot gear in the directed open access fishery). Also, some vessels harvest in multiple fisheries, including

groundfish, that are subject to gear marking requirements. The costs of marking the subject gear in the limited entry and directed open access groundfish fisheries are in addition to the costs associated with marking fishing gear used in other fisheries. For example, of the vessels that may be affected by this rulemaking, an average of approximately 35 percent also participate in state-managed Dungeness crab fisheries annually. Of those vessels, most of them are participants in the directed open access fishery, which are typically smaller operators than those in the limited entry fisheries. For the 5–16 vessels that utilized both pot and bottom longline gear in the groundfish fishery and also participate in Dungeness crab, that would require an investment in at least three distinct sets of markings. Cumulatively, increased operational costs to maintain markings for a diverse portfolio of fishing opportunities could deter vessels from pursuing their historical portfolio of fisheries, or entering these fisheries in the future.

All directed open access vessels are assumed to be small entities, with ex-vessel revenues for all landings (groundfish and non-groundfish) averaging \$85,601 in 2023. In 2023, 197 of the 223 limited entry (bottom longline and/or pot gear endorsed) permits reported as small entities. For limited entry gear switching vessels in the trawl Shorebased Individual Fishing Quota program, of the ten that participated in 2023, all reported as small entities.

Note that there is not a strict one-to-one correlation between vessels and entities, nor between permits and entities; therefore, some persons or firms likely have ownership interests in more than one vessel or permit. Therefore, the actual number of entities regulated by this proposed action may be lower than the estimates presented here.

The proposed action may disproportionately affect small entities compared to large entities given that the potential costs to implement the proposed marking requirements may reduce profitability to a relatively greater degree for small entities. The one-time cost to a single entity or vessel from the gear marking requirements in this rule is not likely to exceed \$1,146 (two coils of manufactured line, plus gear-specific tags for each buoy under the assumption that surface gear would be on both ends of a string of gear). This maximum expected cost is expected to represent less than 1.5 percent of the average ex-vessel revenues for all landings (groundfish and non-

groundfish) for small entities. While the actual marking cost for a single groundfish sector alone might not be significant, the cumulative impacts when combined with gear marking requirements in other fisheries in which the same entity participates (e.g., state-managed Dungeness crab) might be disproportionately higher for individuals with exceptionally small operations or low profit margins.

This action would apply to all entities that participate in limited entry or directed open access groundfish fisheries using bottom longline or pot gears, and the majority of those entities are considered small entities. This action to require consistent marking schemes on all of the subject gears in the directed groundfish fishery is necessary to meet the purpose of this proposed action: to positively or negatively attribute an entanglement to groundfish pot or bottom longline gears. Other alternatives considered shorter distances for line marking; however, there were substantive concerns that if less of the vertical line is marked, the marked portion may not be visible and readily identifiable in case of an entanglement. It is expected that at least 20 fm (36.6 meters) of marked line and gear-specific buoy tags for surface gear will be sufficient to improve the ability to identify the fishery of origin in an entanglement, while preserving enough operational flexibility so as to not place undue burden on the fleets.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule revises an existing collection with new requirements for fishermen using specific gear types to harvest groundfish to disclose publicly what gear type they are deploying by marking their gear with gear-specific tags attached to buoys and at least the top 20 fm (37 m) of the vertical line in a required color scheme (either temporarily marked in continuous alternating-colored bands (will only apply for 3 years following effective date of final rule) or manufactured with only the two specific colors). Burden estimates for the existing collection, which requires vessel identification on a buoy, are revised to update the estimated number of affected entities with updated fishery information and to adjust cost burden estimates for inflation. No change in the minutes per response is proposed to the existing collection. Public reporting burden for new gear marking requirements that are

the subject of this proposed rule is estimated to average 5 hours per year per individual response to gear marking requirements. Burden hour estimates include the time for reviewing instructions, searching equipment sources, gathering and maintaining the equipment needed, and completing and maintaining the collection of information. The collection of similar information was previously approved by the OMB under OMB Control Number 0648-0352.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Submit comments on these or any other aspects of the collection of information at <https://www.reginfo.gov/public/do/PRAMain>.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 21, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. Amend part 660 subparts C, E, and F by:

■ a. Removing the word “Longline” and adding in its place the words “Bottom longline” wherever it appears except where “Bottom longline” already appears under paragraphs “Fishing gear”(6)(i) and 660.711(a)(2);

■ b. Removing the word “longline” and adding in its place the words “bottom longline” wherever it appears, except where “bottom longline” already appears under paragraphs 660.12(a)(15), 660.13(d)(4)(iv)(A)(21), 660.21(b)(1), 660.21(c)(1)(iii) and (c)(2)(ii), 660.140(k)(1)(iv), 660.230(b)(5), 660.330(b)(2)(i).

■ 3. Amend § 660.11 as follows:

■ a. Amend the definition of “Fishing gear” by revising paragraph (5), adding paragraphs (6)(i)(B), (C) and (D), and revising paragraph (10);

■ b. Amend the definition of “Open access fishery” by revising paragraph (1).

The additions and revisions read as follows:

§ 660.11 General definitions.

* * * * *

Fishing gear * * *

(5) *Fixed gear (anchored non-trawl gear)* means the following gear types: bottom longline, trap or pot, set net, and stationary hook-and-line (including commercial vertical hook-and-line) gears. Limited entry fixed gear is defined at § 660.211.

(6) *Hook-and-line* * * *

(i) * * *

(B) *Surface line* means line at or near the water’s surface that connects the main buoy to any additional buoys.

(C) *Vertical line* means the line connecting the main buoy to the groundline.

(D) *Main buoy* means the buoy closest to the groundline, attached to the vertical line at or near the water’s surface.

* * * * *

(10) *Trap or pot* See § 600.10 of this chapter, definition of “trap”. These terms are used as interchangeable synonyms.

(i) *Surface line* means line at or near the water’s surface that connects the main buoy to any additional buoys.

(ii) *Vertical line* means the line connecting a pot or groundline attached to multiple pots to the main buoy.

(iii) *Main buoy* means the buoy closest to the fishing gear (pot or groundline) and attached to the vertical line at or near the surface.

(iv) *Collapsible pot* means a cylindrical pot that is not rigid, and can be collapsed for storage when not deployed, also called “slinky pots”.

* * * * *

Open access fishery * * *

(1) For the purpose of the non-trawl logbook requirements at § 660.13, the provision to fish inside the nontrawl RCA at § 660.330(b)(3), and the provisions for gear identification and

gear marking at § 660.319, directed open access fishery means that a fishing vessel is target fishing for groundfish under the requirements of 50 CFR 660 subpart F, is only declared into an open access groundfish gear type or sector as defined in § 660.13(d)(4)(iv)(A), and has not declared into any other gear type or sector.

* * * * *

■ 4. In § 660.12, revise paragraphs (a)(2) and (a)(9) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(a) * * *

(2) Falsify or fail to affix and maintain vessel and gear identifications and markings as required by § 660.20 or § 660.219, subpart E or § 660.319, subpart F.

* * * * *

(9) When requested or required by an authorized officer, refuse to present fishing gear, including gear marking tags, for inspection, refuse to present fish subject to such persons control for inspection; or interfere with a fishing gear or marine animal or plant life inspection.

* * * * *

■ 5. In § 660.20, revise paragraph (b) to read as follows:

§ 660.20 Vessel and gear identification.

* * * * *

(b) *Gear identification.* Gear identification requirements specific to fisheries using fixed gear (limited entry and open access, as defined at § 660.11 of this subpart) are described at § 660.219, subpart E and § 660.319, subpart F.

■ 6. In § 660.25, revise paragraph (b)(4)(iv)(B)(2) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(iv) * * *

(B) * * *

(2) a single trawl-endorsed limited entry permit and one bottom longline-endorsed limited entry permit for use with a single vessel.

* * * * *

■ 7. Revise § 660.219 to read as follows:

§ 660.219 Fixed gear identification and marking.

(a) *Gear identification.*

(1) Limited entry fixed gear (bottom longline, trap or pot) as defined at § 660.211 must be marked at the surface and on at least one terminal end, with a pole, flag, light, radar reflector, and a buoy (*i.e.*, gear may be marked at either both terminal ends or at one terminal end).

(2) Any buoy used to mark limited entry fixed gear, as defined at § 660.11, subpart C, must be marked with a legible number clearly identifying the owner or operator of the vessel. This number must be marked directly on at least one buoy deployed with the fishing gear; all other buoys may have the number directly on the buoy or may have the number included on tags attached to the buoy, as specified in paragraph (b)(1) of this section. The number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) *Gear marking.* Bottom longline and trap or pot gear, as defined at § 660.11, used in the groundfish limited entry fisheries must have gear-specific markings on any vertical lines (as defined at § 660.11, subpart C) and all buoy(s). These gear-specific markings are in addition to vessel identification requirements set out in paragraph (a) of this section and applicable gear restrictions in § 660.230.

(1) *Buoy marking.* All buoys attached to the surface line of the subject gears in this paragraph must have a gear-specific durable tag for each buoy. Each gear-specific buoy tag must be stamped or engraved, where there is a physical indentation along with a contrasting color. Prior to gear deployment, if the tags are not securely attached to each buoy, tags for each buoy must be shown, upon request, to authorized agents. On a trip where a vessel is declared to fish with the subject gear, all buoys deployed with fishing gear are required to be marked with a tag.

(i) Tags used to mark buoys attached to bottom longline gear must be brown and large enough to accommodate a letter "L" engraved that is at least 1³/₄ inches (4.4 centimeters) in height.

(ii) Tags used to mark buoys attached to pot/trap gear must be orange and large enough to accommodate a letter "P" engraved that is at least 1³/₄ inches (4.4 centimeters) in height.

(2) *Vertical line marking.* All vertical lines (as defined at § 660.11) of the subject gears in this paragraph must have gear specific marks. Marks must be continuous in at least the top 20 fm (37 m) of the vertical line, measured from the main buoy down towards the groundline.

(i) Line manufactured in a gear specific color scheme must be used for the marked portion of line. Lines must be both brown and blue for use with

bottom longline gear. Lines must be both orange and blue for use with pot gear. At least one-third of strands in marked line should be one of the gear-specific colors specified here, and the remainder of the strands the other color. Presence of any third color, besides white, is prohibited in the portion of the line required to be marked.

(ii) Until [DATE THREE YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], the colors specified in § 660.219(b)(2)(i) may be applied by temporary methods such that the colors are clearly visible and in continuous, alternating bands of 18–28 inches (46–71 cm) each, over the entire portion of the line required to be marked in this paragraph.

■ 8. In § 660.230, revise paragraphs (b)(1) and (4) and add paragraph (b)(7) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(b) * * *

(1) Bottom longline and pot or trap gear are authorized in the limited entry fixed gear fishery, providing the gear complies with the restrictions set forth in this section, and gear identification and marking requirements described in § 660.219 of this subpart.

* * * * *

(4) Traps or pots must have escape panels.

(i) *General.* Traps or pots must have escape panels constructed with number 30 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter that is parallel to, and within 6 inches (15.2 cm) of the bottom of the pot, results when the twine deteriorates.

(ii) *Collapsible pots.* A collapsible pot (defined at § 660.11, subpart C) is exempt from the placement requirements for escape panels described in this section. Instead, a collapsible pot must have one of the following:

(A) An escape panel placed anywhere on the mesh of the collapsible pot, constructed with number 30 or smaller untreated cotton twine and in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(B) One door on the pot must measure at least 8 inches (20.3 cm) in diameter and be attached with number 30 or smaller untreated cotton thread.

* * * * *

(7) Surface line, defined at § 660.11, subpart C, that is used with bottom longline or pot gear may not exceed 10

fathoms (18.3 m) in length, measured from the terminal end to the main buoy.

* * * * *

■ 9. In § 660.319, revise paragraphs (a) and (b) to read as follows:

§ 660.319 Open access fishery gear identification and marking.

(a) *Gear identification.*

(1) Open access fixed gear (bottom longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be marked at the surface and at each terminal end, with a pole, flag, light, radar reflector, and a buoy, except that in the directed open access fishery (defined at § 660.11), bottom longline and pot gears may be marked at just one terminal end as described in this paragraph (*i.e.* gear may be marked at either both terminal ends or one terminal end).

(2) Open access commercial vertical hook-and-line gear that is closely tended as defined at § 660.311 of this subpart, may be marked only with a single buoy of sufficient size to float the gear.

(3) A buoy used to mark fixed gear under paragraph (a)(1) or (a)(2) of this section must be marked with a legible number clearly identifying the owner or operator of the vessel. Any buoy used to mark bottom longline or pot gear in the directed open access fishery must be marked with a legible number clearly identifying the owner or operator of the vessel. For these two gear types, the number must be marked directly on at least one buoy used with surface gear, all other buoys may have the number directly on the buoy or may have the number included on gear marking tags attached to the buoy, as specified in paragraph (b)(1) of this section. In all cases, the number may be either:

(i) If required by applicable state law, the vessel's number, the commercial fishing license number, or buoy brand number; or

(ii) The vessel documentation number issued by the USCG, or, for an undocumented vessel, the vessel registration number issued by the state.

(b) *Gear marking.* Bottom longline and pot gears used in the directed open access fishery (defined at § 660.11) must have gear-specific markings on any vertical lines (as defined at § 660.11, subpart C) and all buoy(s). These gear-specific markings are in addition to identification requirements set out in paragraph (a) of this section and applicable gear restrictions set out in § 660.330.

(1) All buoys attached to the surface line of the subject gears in this paragraph must have a gear-specific durable tag for each buoy. Each gear-

specific buoy tag must be stamped or engraved, where there is a physical indentation along with a contrasting color. Prior to gear deployment, if the tags are not securely attached to each buoy, tags for each buoy must be shown, upon request, to authorized agents. On a trip where a vessel is declared to fish with the subject gear, all buoys are required to be marked with a tag.

(i) Tags used to mark buoys attached to bottom longline gear must be brown and large enough to accommodate a letter “L” engraved that is at least 1¾ inches (4.4 cm) in height.

(ii) Tags used to mark buoys attached to pot/trap gear must be orange and large enough to accommodate a letter “P” engraved that is at least 1¾ inches (4.4 cm) in height.

(2) All vertical lines (as defined at § 660.11) of the subject gears in this paragraph must have gear specific marks. Marks must be continuous in at least the top 20 fm (37 m) of the vertical line, measured from the main buoy down towards the groundline.

(i) Manufactured line in a gear specific color scheme must be used for the marked portion of line. Lines must be both brown and blue for use with bottom longline gear. Lines must be both orange and blue for use with pot gear. At least one-third of strands in marked line should be in one of the listed colors, and the remainder of the strands in the other color. Presence of any third color, besides white, is prohibited in the portion of the line required to be marked.

(ii) Until [date three years after the effective date of the final rule], the colors specified in § 660.319(b)(2)(i) may be applied by temporary methods such that the colors are clearly visible and in continuous, alternating bands of 18–28 inches (46–71 cm) each, over the entire portion of the line required to be marked in this paragraph.

■ 10. In § 660.330, revise paragraphs (b) introductory text, (b)(2)(i), and (b)(2)(iii) to read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(b) *Gear restrictions.* Open access gear is defined at § 660.11, subpart C, and includes but is not limited to, bottom longline, trap or pot, hook-and-line (fixed or mobile), setnet (anchored gillnet or trammel net, which are permissible south of 38° N lat. only), spear and non-groundfish trawl gear (trawls used to target non-groundfish species: pink shrimp or ridgeback prawns, and, south of Pt. Arena, CA (38°57.50' N lat.), California halibut or sea cucumbers). Restrictions for gears used in the open access fisheries are as follows:

* * * * *

(2) * * *

(i) *Fixed gear.* Fixed gear (bottom longline, trap or pot, set net and stationary hook-and-line gear, including commercial vertical hook-and-line gear) must be attended at least once every 7 days and is subject to the vessel identification requirements described at § 660.319 of this subpart. Vessels fishing with bottom longline and snap gears as

defined at § 660.11, subpart C are subject to the requirements of the Seabird Avoidance Program described in § 660.21, subpart C. Vessels fishing with bottom longline or pot and trap gears in the directed open access fishery, as defined at § 660.11, are subject to the gear marking requirements described in § 660.319 of this subpart.

* * * * *

(iii) *Traps or pots must have escape panels.*

(A) Traps or pots must have escape panels constructed with number 30 or smaller untreated cotton twine in such a manner that an opening at least 8 inches (20.3 cm) in diameter that is parallel to, and within 6 inches (15.2 cm) of the bottom of the pot, results when the twine deteriorates.

(B) A collapsible pot (defined at § 660.11, subpart C) is exempt from the placement requirements for escape panels described in this section. Instead, a collapsible pot must have one of the following:

(1) An escape panel placed anywhere on the mesh of the collapsible pot, constructed with number 30 or smaller untreated cotton twine and in such a manner that an opening at least 8 inches (20.3 cm) in diameter results when the twine deteriorates.

(2) One door on the pot must measure at least 8 inches (20.3 cm) in diameter and be attached with number 30 or smaller untreated cotton thread.

* * * * *

[FR Doc. 2026–02370 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 91, No. 25

Friday, February 6, 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

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

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 February 19, 2026. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. position to be discussed at the 45th Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS45) of the Codex Alimentarius Commission (CAC). CCMAS45 will be held in Budapest, Hungary, from March 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 45th Session of the CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for February 19, 2026, from 1:00–3:00 p.m. ET.

ADDRESSES: The public meeting will take place via video teleconference only. Documents related to the 45th Session of the CCMAS will be accessible via the internet at the following address: <https://www.fao.org/fao-who-codexalimentarius/meetings/detail/it/?meeting=CCMAS&session=45>.

Dr. Patrick Gray, U.S. Delegate to the 45th Session of the CCMAS, invites interested U.S. parties to submit their comments electronically to the following email address: Patrick.Gray@fda.hhs.gov. Comments should state that they relate to the activities of the 45th Session of the CCMAS.

Registration: Attendees may register to attend the public meeting at the following link: <https://www.zoomgov.com/meeting/register/ExjuxbmTTb2I0LaiKg0duw>. After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 45th Session of the CCMAS, contact the U.S. Delegate, Dr. Patrick Gray, by email at: Patrick.Gray@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 Codex Committee on Methods of Analysis and Sampling (CCMAS) are:

(a) to define the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) to serve as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) to specify, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) to consider, amend, if necessary, and endorse, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of micro biological quality and safety in food, and the assessment of specifications for food additives, do not fall within the terms of reference of this Committee;

(e) to elaborate sampling plans and procedures, as may be required;

(f) to consider specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and,

(g) to define procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

Hungary hosts the CCMAS. The United States attends the CCMAS as a member country of Codex.

Issues To Be Discussed at the Public Meeting

Although the meeting agenda was not available at the time of publication of this notice, the following items are expected to be on the agenda for the 45th Session of the CCMAS and will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and other subsidiary bodies
- Endorsement of methods of analysis provisions and sampling plans in Codex standards
- Methods of analysis and sampling submitted by Codex subsidiary bodies
- Matters pending from CCMAS44
- Review of methods of analysis in commodity standards (fish and fishery products, fats and oils, cereals, pulses and legumes and derived products)
- Retyping of ISO 1871 for determining protein in quinoa
- Review of methods of analysis in CXS 234
- Fruit juices workable package
- Cocoa products and chocolate workable package
- Sugars and honey workable package
- Methods of analysis for precautionary allergen labelling
- Sampling plans: Discussion papers
- Review of sampling plans in CXS 234–1999
- Sampling plans for bulk materials/heterogenous lots including mycotoxins
- Harmonization of names and format for principles identified in CXS 234
- Report of an Inter-Agency Meeting on Methods of Analysis
- Other business and future work

Public Meeting

At the February 19, 2026, public meeting, agenda items and draft U.S. positions 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. Patrick Gray, U.S. Delegate to the 45th

Session of the CCMAS, at *Patrick.Gray@fda.hhs.gov*. Written comments should state that they relate to activities of the 45th Session of the CCMAS.

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>.

(Authority: 19 U.S.C. 2578; 7 CFR 2.602.)

Done at Washington, DC, on February 2, 2026.

Julie A. Chao,

Deputy U.S. Manager for Codex Alimentarius.

[FR Doc. 2026-02339 Filed 2-5-26; 8:45 am]

BILLING CODE 3420-3F-P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Foods

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 March 5, 2026. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. position to be discussed at the 28th Session of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF28) of the Codex Alimentarius Commission (CAC). CCRVDF28 will be held in Minneapolis, MN, from March 23–27, 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 28th Session of the CCRVDF and to address items on the agenda.

DATES: The public meeting is scheduled for March 5, 2026, from 1:00–3:00 p.m. ET.

ADDRESSES: The public meeting will take place via video teleconference only. Documents related to the 28th Session of the CCRVDF will be accessible via the internet at the following address: <https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCRVDF&session=28>.

Dr. Jonathan Greene, U.S. Delegate to the 28th Session of the CCRVDF, invites interested U.S. parties to submit their comments electronically to the following email address: *jonathan.greene1@fda.hhs.gov*. Comments should state that they relate to the activities of the 28th Session of the CCRVDF.

Registration: Attendees may register to attend the public meeting at the following link: <https://www.zoomgov.com/meeting/register/MdnmLIDfSXmt0JOkw1kBXw>. After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 28th Session of the CCRVDF, contact the U.S. Delegate, Dr. Jonathan Greene, by email at: *jonathan.greene1@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 Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) are:

- (a) to determine priorities for the consideration of residues of veterinary drugs in foods;
- (b) to recommend maximum levels of such substances;
- (c) to develop codes of practice as may be required; and,
- (d) to consider methods of sampling and analysis for the determination of veterinary drug residues in foods.

The CCRVDF is hosted by the United States. The United States attends the CCRVDF as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the Provisional Agenda for the 28th Session of the CCRVDF will be discussed during the public meeting:

- Matters referred by the CAC and other subsidiary bodies
- Matters of interest arising from international organizations, including the Joint Expert Committee on Food Additives (JECFA)

- Matters of interest arising from the Joint FAO/IAEA Centre of Nuclear Techniques in Food and Agriculture
- Matters of interest arising from the World Organisation for Animal Health (WOAH), including the Veterinary International Conference on Harmonization (VICH)
- MRLs for veterinary drugs arising from JECFA98 (2024) maximum residue limits (MRLs) for fumagillin dicyclohexylamine (DCH) in fish (fillet) and honey
- Extrapolated MRLs for different combinations of compounds/tissues
- Other matters related to the extrapolation of MRLs for veterinary drugs in foods to one or more species: Extrapolation to edible offal tissues other than liver and kidney
- Guidance for actions that competent authorities could take upon detection of residues of veterinary drugs in food of animal origin caused by the unavoidable and unintentional carryover of veterinary drugs in animal feed
- Action levels for different combinations of compounds/tissues
- Coordination of work between the Codex Committee on Pesticide Residues (CCPR) and CCRVDF
- Priority list of veterinary drugs for evaluation or re-evaluation by JECFA
- Other business and future work

Public Meeting

At the March 5, 2026, public meeting, agenda items and draft U.S. positions 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. Jonathan Greene, U.S. Delegate to the 28th Session of CCRVDF, at *jonathan.greene1@fda.hhs.gov*. Written comments should state that they relate to activities of the 28th Session of the CCRVDF.

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>.

(Authority: 19 U.S.C. 2578; 7 CFR 2.602.)

Done at Washington, DC, on February 2, 2026.

Julie A. Chao,

Deputy U.S. Manager for Codex Alimentarius.

[FR Doc. 2026-02330 Filed 2-5-26; 8:45 am]

BILLING CODE 3420-3F-P

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service****[Docket No. FSIS–2025–0211]****2026 Rate Changes for the Basetime, Overtime, Holiday, Laboratory Services, and Export Application Fees****AGENCY:** Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).**ACTION:** Notice.

SUMMARY: FSIS is announcing the 2026 rates it will charge meat, poultry, and egg products establishments, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, laboratory services, and export application fees. Most rates for 2026 will be the same as for 2025. FSIS is decreasing the rate for laboratory services.

DATES: FSIS will continue to charge the 2025 rates through calendar year 2026, except for laboratory services, which were reduced starting January 11, 2026.

FOR FURTHER INFORMATION CONTACT: For further information contact Martina Simms, Director, Budget Division, Office of the Chief Financial Officer; Email: Martina.Simms@usda.gov, Telephone: (202) 937–4201.

SUPPLEMENTARY INFORMATION:**Background**

Under the Federal Meat Inspection Act (FMIA)(21 U.S.C. 695) and the Poultry Products Inspection Act (PPIA)(21 U.S.C. 468), the cost of inspection—except the cost of overtime

and holiday pay pursuant to 7 U.S.C. 2219a—is borne by the United States. Section 2219a gives the Secretary discretion to accept reimbursement for any sums paid for overtime and holiday work. The statutes do not, however, require the Secretary to seek full reimbursement for such sums. Under the Egg Products Inspection Act (EPIA)(21 U.S.C. 1053), the Secretary has discretion with respect to the rates charged for overtime and holiday pay.

Reimbursement rates are calculated annually in accordance with FSIS regulations. On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates it charges meat, poultry, and egg products establishments and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220). These formulas rely on the previous fiscal year actuals for salaries, hours worked, benefits, travel and operating costs, overhead, and bad debt allowance. In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in **Federal Register** notices prior to the start of each calendar year, and apply the rates on the first FSIS pay period at the beginning of the calendar year.

FSIS has determined that the methodology used to determine the costs for providing voluntary, overtime, and holiday inspection and identification, certification services, and export application fees may no longer accurately reflect the Agency's current cost structure. FSIS has not reevaluated

most of its formulas for calculating rate changes since 2009.¹ Under the existing formulas, most rates for fiscal year 2026 would materially increase, even though costs associated with providing these services have not.

As discussed, FSIS' acceptance of the reimbursement rate is optional under the FMIA and PPIA ("The Secretary of agriculture may . . . accept from the establishment reimbursement . . ."), and it is authorized for "any" sums, not "all" sums, paid by the Secretary (7 U.S.C. 2219a(a)(2)). In addition, the EPIA provides the Secretary with discretion regarding the rates charged for overtime and holiday pay. Given the 2026 rates calculated under the existing formula may not accurately reflect FSIS' current cost structure, FSIS will exercise its discretion under the FMIA, PPIA, and EPIA and accept reimbursement at the 2025 rates for voluntary, overtime, and holiday inspection and identification, certification services and export fee applications while the Agency undertakes a comprehensive review of the methodology (89 FR 106417, December 30, 2024). This will allow FSIS to ensure that future rates reflect the true cost of the services delivered and provide time to verify whether current formulas remain accurate or need updates. FSIS is reducing the laboratory services fee for 2026 in accordance with its regulations (9 CFR 391.4).

2026 Calculations and Increased Rates

The following table lists the 2025 rates and calculated 2026 rates, by type of service:

Service	2025 Rate	Calculated 2026 rate (not implemented)
Basetime	\$73.04	\$78.80
Overtime	89.68	97.04
Holiday	106.32	115.28
Export Application	* 4.83	* 5.02

* Per application.

Basetime, Overtime, and Holiday Fees

FSIS calculated the basetime, overtime, and holiday rates for 2026 but will continue to charge the 2025 rates for these services because the 2026 calculations may not accurately reflect the Agency's current cost structure. In the 2026 formula for the basetime, overtime, and holiday fees, the variable representing the "[Office of Field

Operations] previous fiscal year's regular hours" decreased compared to the previous year, likely due to staffing adjustments and efficiency improvements. This reduction may have artificially increased the projected 2026 rates. The 2025 rates will cover FSIS costs in fiscal year 2026; therefore, increasing the rates based on the current

formulas in the regulations would unnecessarily burden industry.

The calculations below demonstrate that the rates charged for these services would have increased if the Agency chose to utilize the 2026 formulas.

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay

¹ The one exception is the export application rate change methodology, which was updated on June 29, 2016 (81 FR 42225).

by the previous fiscal year’s regular hours, plus the quotient multiplied by the calendar year’s percentage of cost-of-living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2026 basetime rate per hour per program employee is: [FY 2025 OFO Regular Direct Pay divided by the previous fiscal year’s Regular Hours (\$504,606,328/13,974,759)] = \$36.11 + (\$36.11 * 1.0% (calendar year 2026 Cost of Living Increase)) = \$36.47 + \$14.12 (benefits rate) + \$2.74 (travel and operating rate) + \$25.49 (overhead rate) + \$0.00 (bad debt allowance rate) = \$78.82, rounded down to \$78.80, so that it is divisible by 4.

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel’s previous fiscal year’s regular direct pay by the previous fiscal year’s regular hours, plus that quotient multiplied by the calendar year’s percentage of cost-of-living increase, multiplied by 1.5 (for overtime), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2026 overtime rate per hour per program employee is:

[FY 2025 OFO Regular Direct Pay divided by previous fiscal year’s Regular Hours (\$504,606,328/13,974,759)] = \$36.11 + (\$36.11 * 1.0% (calendar year 2026 Cost of Living Increase)) = \$36.47 * 1.5 = \$54.70 + \$14.12 (benefits rate) + \$2.74 (travel and operating rate) + \$25.49(overhead rate) + \$0.00 (bad debt allowance rate) = \$97.05, rounded down to \$97.04, so that it is divisible by 4.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel’s previous fiscal year’s regular direct pay by the previous fiscal year’s regular hours, plus that quotient multiplied by the calendar year’s percentage of cost-of-living increase, multiplied by 2 (for holiday pay), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2026 holiday rate per hour per program employee calculation is:

[FY 2025 OFO Regular Direct Pay divided by previous fiscal year’s Regular Hours (\$504,606,328/13,974,759)] = \$36.11 + (\$36.11 * 1.0% (calendar year 2026 Cost of Living Increase)) = \$36.47

* 2 = \$72.94 + \$14.12 (benefits rate) + \$2.74 (travel and operating rate) + \$25.49(overhead rate) + \$0.00 (bad debt allowance rate)= \$115.29, rounded down to \$115.28, so that it is divisible by 4.

2026 Electronic Export Application Fee

FSIS calculated the export application rate for 2026 but will continue to charge the 2025 rate, because the 2026 increased fee is not necessary to cover FSIS’ costs associated with providing this service. The increased fee for 2026 was driven by an increase in labor costs mostly due to pay raises implemented in calendar year 2025 and an increase in the Public Health Information System Export Module maintenance contract. However, FSIS has determined that the 2025 fee will cover the cost of the service delivered. Therefore, FSIS will not raise the fee for fiscal year 2026.

As published in FSIS’ final rule, *Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification* (81 FR 42225, June 29, 2016), the Electronic Export Application Fee Formula is:

Labor Cost (Technical Support + Export Library Maintenance) + IT Cost (Ongoing Operations and Maintenance + Login.gov)

Number of Export Applications

FSIS stated in the 2016 final rule (81 FR 42225) and the 2017 **Federal Register** notice (82 FR 42056, September 6, 2017) that it would update and recalculate the fee based on the best available estimates for costs and number

of applications. As of November 2024, a majority of countries have been included in the export component. Therefore, FSIS is able to accurately estimate the number of export applications (the denominator in the

formula) and update costs to include the transition from eAuthentication to *Login.gov*.

2026 Electronic Export Application Fee:

Labor Cost (\$613,900+ (\$192,961)) + IT Cost (\$1,688,373+\$24,000)

501,984

= \$5.02

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year’s direct benefits costs by the previous fiscal year’s total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year’s percentage cost of

living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2026 benefits rate per hour per program employee is:

[FY 2025 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$236,270,391/16,897,173)] = \$13.98 + (\$13.98 * 1.0% (calendar year 2026 Cost of Living Increase)) = \$14.12.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2026 travel and operating rate per hour per program employee is:

[FY 2025 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$45,247,802/16,897,173)] = \$2.68 + (\$2.68 * 2.2% (2026 Inflation)) = \$2.74.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the provision for the operating balance less any Greenbook costs (*i.e.*, costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2026 overhead rate per hour per program employee is:

[FY 2025 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$421,449,512/16,897,173)] = \$24.94 + (\$24.94 * 2.2% (2026 Inflation)) = \$25.49.

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed for overtime and holiday inspection services that is not paid in full by establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2026 calculation for bad debt rate per hour per program employee is:

[FY 2025 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = (\$49,485/16,897,173)] = \$0.00.

2026 Laboratory Service Rate and Calculation

The 2026 laboratory service rate calculation accurately covers the cost of this service. Unlike the basetime,

overtime, and holiday formulas, the formula used to calculate the laboratory services rate does not use the "[Office of Field Operations] previous fiscal year's regular hours" variable which artificially increased the basetime, overtime, and holiday rates. Instead, the laboratory fee rate is calculated using the Office of Public Health Science's (OPHS) previous fiscal year's regular hours (9 CFR 391.4). This variable, unlike OFO work hours, did not significantly decrease from the previous fiscal year and, as such, did not artificially inflate the 2026 rate. The final rate has been rounded to make the amount divisible by the quarter hour (15 minutes). Fifteen minutes is the minimum charge for the services covered by this rate.

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2026 laboratory services rate per hour per program employee is:

[FY 2025 OPHS Regular Direct Pay/OPHS Regular hours (\$20,422,806/408,851)] = \$49.95 + (\$49.95 * 1.0% (calendar year 2026 Cost of Living Increase)) = \$50.45 + \$14.12 (benefits rate) + \$2.74 (travel and operating rate) + \$25.49 (overhead rate) + \$0.00 (bad debt allowance rate) = \$92.80, which is divisible by 4.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and

information. This service is available at: <https://www.fsis.usda.gov/subscribe>.

Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

Done at Washington, DC.

Justin Ransom,
Administrator.

[FR Doc. 2026-02352 Filed 2-5-26; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE**Forest Service****Information Collection: Federal Excess Personal Property and Firefighter Property Program Administration**

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service (Agency) is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Administration.

DATES: Comments must be received in writing on or before April 7, 2026 to be assured of consideration.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Michael Huneke, National FEPP/FFP Program Manager, Fire and Aviation Management; USDA Forest Service, C/O USDA Agricultural Marketing Service, 101 W Fulton Street, New Holland, PA 17557. Comments may also be submitted via email to: michael.huneke@usda.gov.

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available for public viewing. Please note that comments containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may request that an electronic copy of the supporting documents for the information collection and/or any comments received be sent via return email. Requests should be emailed to michael.huneke@usda.gov. The information collection request is posted online at <https://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT:

Michael Huneke, National FEPP/FFP Program Manager, Fire and Aviation Management; (484) 888-0005; michael.huneke@usda.gov. Individuals who are deaf, hard of hearing, or have

a speech disability may call 711 to reach the Telecommunications Relay Service then provide the phone number of the person named as a point of contact for further information.

SUPPLEMENTARY INFORMATION:

Title: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Administration.

OMB Number: 0596-0223.

Expiration Date of Approval: June 30, 2026.

Type of Review: Extension with Revision of a currently approved information collection.

Abstract: Federal Excess Personal Property (FEPP) and Firefighter Property (FFP) Program Cooperative Agreements are available to State forestry agencies. The program administration provides participating State agencies with excess Department of Defense and other Federal agencies' property and supplies to be used in firefighting and emergency services. The FEPP program loans property to the State who in turn sub-loans the equipment and supplies to fire departments. The FFP program transfers ownership of non-controlled property to either the State agency or the individual fire department.

A cooperative agreement collects information from the participating State agencies and outlines the requirements and rules for the cooperation. Each State forestry agency shall provide an Accountable Officer who will be responsible for the integrity of the program within their respective State. For this reason, FEPP and FFP collect the State forestry agency contact information, the information of the Accountable Officer, and the requirements of participation in the FEPP and FFP programs.

A cooperative agreement will be prepared by each State forestry agency that desires to participate in one or both programs. Participating State agencies must submit separate agreements if they desire to be participants in both programs. Agreements will be processed and maintained at the United States Department of Agriculture, Forest Service, Fire and Aviation Management, Partnerships, Cooperative Programs branch in each Forest Service Regional Office.

Because FEPP property belongs to the Forest Service, State Cooperators will use the Federal Excess Property Management Inventory System (FEPMIS) for all records, documentation, and audit processes involved in acquiring, management, and disposing of FEPP property. Forest Service property management staff will

ensure information entered in FEPMIS is uploaded in the USDA National Finance Center database—Corporate Property Automated Information System—Personal Property (CPAIS-PP). Forest Service Property Management Officer (PMO) ensures records are updated and accurate. FEPMIS is the official property management database for the FFP program.

The authority to provide excess property to state agencies under the FEPP Program comes from the Federal Property and Administration Services Act of 1949, 40 U.S.C., Sec 483. The FFP Program is authorized under 10 U.S.C., Subtitle A, Part IV, Chapter 153, 2576b.

Affected Public: Individuals.

Estimated Annual Burden per Response: 1 hour and 2 minutes.

Estimated Annual Number of Respondents: 65.

Estimated Annual Number of Responses per Respondent: 302.

Estimated Total Annual Burden on Respondents: 570 hours.

Comment is Invited: Comment is invited on (1) whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget approval. Michael Huneke, National Program Manager, Federal Excess Personal Property and Firefighter Property Programs.

David Lytle,

Fire and Aviation, Safety and Occupational Health, Symbols, and Employee Support Services.

[FR Doc. 2026-02438 Filed 2-5-26; 8:45 am]

BILLING CODE 3411-15-P

COMMISSION ON CIVIL RIGHTS**Notice of Public Meeting of the New Jersey 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 New Jersey Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose is for the committee to discuss the Proposal Stage on the committee's chosen topic of antisemitism and civil rights.

DATES: Monday, February 23, 2026, at 3:00 p.m. Eastern Time.

ADDRESSES:

Registration Link (Audio/Visual):
https://www.zoomgov.com/webinar/register/WN_O7i11vjZS9qa2eykDJde7A.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll Free; Webinar ID: 161 326 4147 #.

AGENDA LINK: <https://usccr.app.box.com/folder/363748071690> (note: final agenda will be available prior to the meeting date).

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, Designated Federal Officer, at vmoreno@usccr.gov or 1-434-515-0204.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through a registration link (above). Any interested members of the public may attend committee meetings. 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 each meeting will include a list of persons who are present. 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 ebohor@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 Evelyn Bohor at ebohor@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-656-8937.

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 the file sharing website, <https://tinyurl.com/3ev8d9n9> as well as at:

www.facadatabase.gov under the Commission on Civil Rights, selecting the Advisory Committee of interest. 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 ebohor@usccr.gov.

Dated: February 4, 2026.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2026-02329 Filed 2-5-26; 8:45 am]

BILLING CODE P**DEPARTMENT OF COMMERCE****Census Bureau****Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Business Survey**

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 2, 2025, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Annual Business Survey.

OMB Control Number: 0607-1004.

Form Number(s): ABS-1.

Type of Request: Regular submission, Request for a Revision of a Currently Approved Collection.

Number of Respondents: 230,000.

Average Hours per Response: 1 hour and 17 minutes.

Burden Hours: 295,858.

Needs and Uses: The Annual Business Survey (ABS) measures business demographics, research and development (R&D), innovation, and critical and emerging technologies among businesses in the United States. The ABS is a joint statistical project between the National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) and the Census Bureau.

The ABS combines Census Bureau firm-level collections to reduce respondent burden, increase data quality, and reduce operational costs. The ABS is designed to be adaptive, allowing content to be rotated on and off the survey based on topics of relevance.

Content previously collected on the Business Enterprise Research and Development (BERD) Survey will now be collected as part of the Annual Business Survey. The BERD survey will no longer be fielded independently. Integrating the survey instruments necessitated changes to the questions which were then tested with the target populations. The Census Bureau and NCSES worked collaboratively to determine these necessary changes.

R&D data collected from for-profit businesses and nonprofit organizations account for nearly 75 percent of the total U.S. R&D expenditures each year. A consistent R&D information base is essential to government officials formulating public policy, industry personnel involved in corporate planning, and members of the academic community conducting research.

Prior iterations of the ABS used the collection year as part of the survey name. Moving forward, and to be discernible from the past ABS, the survey will omit the mention of the collection year and use the data reference year in all collection materials, informational documentation, and publication tables. As a result, the data collection that starts in May of 2026 will be referred to as the ABS Reference Year 2025.

Statistics from the ABS will be used by government program officials, industry organization leaders, economic and social analysts, business entrepreneurs, and domestic and foreign researchers in business, government and academia.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The survey is conducted under the authority of Title 13, United States Code, Sections 8(b), 131, and 182; Title 42, United States

Code, Sections 1861–76 (National Science Foundation Act of 1950, as amended); and Section 505 within the America COMPETES Reauthorization Act of 2010. Sections 224 and 225 of Title 13, United States Code, require a response from sampled firms.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1004.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–02453 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–12–2026]

Foreign-Trade Zone (FTZ) 204, Notification of Proposed Production Activity; Eastman Chemical Company; (Cellulose Acetate Fibers); Kingsport, Tennessee

Eastman Chemical Company submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Kingsport, Tennessee within Subzone 204B. The notification conforming to the requirements of the Board’s regulations (15 CFR 400.22) was received on January 29, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board’s website—accessible via www.trade.gov/ftz. The proposed finished products and component would be added to the production authority that the Board

previously approved for the operation, as reflected on the Board’s website.

The proposed finished products include: Fiber Ester Flake; Filament Yarn; Filter Tow; and Staple Fiber (duty rate ranges from 4.3% to 8.8%).

The proposed foreign-status materials/components include: High Purity Dissolving Pulp (duty free).

The request indicates that certain materials/components are subject to duties under section 1702(a)(1)(B) of the International Emergency Economic Powers Act (section 1702) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 1702 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). The request also indicates that High Purity Dissolving Pulp is subject to an antidumping/countervailing duty (AD/CVD) order/investigation if imported from certain countries. The Board’s regulations (15 CFR 400.13(c)(2)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board’s Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is March 18, 2026.

A copy of the notification will be available for public inspection in the “Online FTZ Information System” section of the Board’s website.

For further information, contact John Frye at john.frye@trade.gov.

Dated: January 30, 2026.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2026–02355 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–13–2026]

Foreign-Trade Zone (FTZ) 110, Notification of Proposed Production Activity; Intel Foundry Corporation; (Semiconductor Products); Rio Rancho and Albuquerque, New Mexico

Intel Foundry Corporation submitted a notification of proposed production activity to the FTZ Board (the Board) for its facilities in Rio Rancho and Albuquerque, New Mexico within

Subzone 110E. The notification conforming to the requirements of the Board’s regulations (15 CFR 400.22) was received on January 29, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board’s website—accessible via www.trade.gov/ftz.

The proposed finished products include: photomasks; semiconductor transducers; electronic integrated circuit processors; electronic integrated optical circuits; electronic integrated circuit memories; electronic integrated circuit amplifiers; electronic integrated interposer circuits; electronic integrated circuits (not yet determined to be processor or memory); printed circuits; and electronic integrated circuits (duty-free).

The proposed foreign-status materials/components include: corundum; methane (liquid and gas); chlorine; argon; oxygen; hydrogen; helium; xenon; nitrogen; hydrochloric acid; hydrogen chloride; sulfuric acid; nitric acid; phosphoric acid; hydrofluoric acid; silicate reagent; hydrogen bromide; carbon dioxide; silica; carbon monoxide; nitrous oxide; nitric oxide; sulfur dioxide; boron trichloride; dichlorosilane; silane; silicon tetrachloride; chlorine trifluoride; diiodosilane; nitrogen trifluoride; anhydrous ammonia; potassium hydroxide in solid form; sulfur hexafluoride gas; tungsten hexafluoride; titanium tetrachloride; carbonyl sulfide; copper sulphate solution; potassium chloride electrode filling solution; cerium hydroxide; hydrogen peroxide; disilane; phosphine of copper; octane; ethyne (acetylene); trifluoromethane; halocarbon; difluoromethane; fluoromethane; octafluorocyclobutane; isopropyl alcohol; tert-butyl alcohol; hexachlorodisilane; 2-heptanone; cyclohexanone; cyclopentanone; sodium acetate; butyl acetate; propylene glycol monomethyl ether acetate; 2-methylamino)ethanol; tetramethylammonium hydroxide; tetraethylsilanediamine; di-iso-propylaminosilane; tetramethylsilane; trimethylaluminum; trimethylsilane; butyrolactone; potassium chloride; butoxyethanol; ethanolamine; lubrication; ammonium; cerium dioxide; tetraethylammonium

hydroxide; soldering, brazing or welding powder; triethanolamine based solution; dimethyl sulfoxide; wafers polycrystalline silicon; cobalt based solution; diborane gas; ethylene glycol based solution; xenon and hydrogen mixture; melamine resin; ion exchanger resin; plastic case for semiconductor wafers; ethylene bags for packing; ammonium fluoride; plastic packing; plastic bottles; self-adhesive label; articles of glass, quartz reactor tubes; filtering machine for water purification; permanent metal magnets; central processing units (microprocessor); memory; cobalt sputtering target; copper sputtering target; tantalum sputtering target; titanium sputtering target; telecommunication connectors; electrical conductors for telecommunication; electrical conductors (low voltage cables); insulated electric conductors for voltage not exceeding 1,000 volts; copper electrical conductors; fitted electric conductors; electric conductors for voltage exceeding 1,000 volts; deuterium; hydrocarbon deposition solution; tantalum powder; tetrakis (methylethylamino) zirconium; 2-propanol, 1-methoxy, 2-aceetate based undercoat material; polyglycerol polymer based slurry; surfactant solution; hydroxyethanediphosphonic acid based wafer cleaning solution; acetic acid based slurry; amorphous silica based slurry; silica and phosphoric acid based slurry; photoresist; 4-morpholinecarbaldehyde based solution; nitrogen trifluoride; benzotriazole based cleaning solution; helium and nitrogen mixture; helium based compressed gas mixture; hydrogen and argon mixture; isobutyl propionate-based developer solution; methane and argon mixture; and, oxygen and helium mixture (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to duties under section 1702(a)(1)(B) of the International Emergency Economic Powers Act (section 1702), section 232 of the Trade Expansion Act of 1962 (section 232), or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 1702, section 232, and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is March 18, 2026.

A copy of the notification will be available for public inspection in the

"Online FTZ Information System" section of the Board's website.

For further information, contact Christopher Wedderburn at Chris.Wedderburn@trade.gov.

Dated: January 30, 2026.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2026-02376 Filed 2-5-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-939]

Oleoresin Paprika From India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of oleoresin paprika from India. The period of investigation is April 1, 2024, through March 31, 2025. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Laura Delgado or Charles Doss, 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) 482-1468 or (202) 482-4474, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on July 22, 2025.¹ On September 3, 2025, Commerce postponed the preliminary determination of this investigation until November 24, 2025.²

¹ See *Oleoresin Paprika from India: Initiation of Countervailing Duty Investigation*, 90 FR 34433 (July 22, 2025) (*Initiation Notice*).

² See *Oleoresin Paprika from India: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 90 FR 42564 (September 3, 2025).

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 Accordingly the revised deadline is now January 29, 2026.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁵ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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 Investigation

The product covered by this investigation is oleoresin paprika from India. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁶ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).⁷ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. Accordingly, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.

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 Memorandum, "Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Oleoresin Paprika from India," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁷ See *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 701 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 subsidy is specific.⁸

Preliminary Affirmative Determination of Critical Circumstances, In Part

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist with respect to imports of oleoresin paprika from Synthite Industries Pvt. Ltd (Synthite), but do not exist with respect to Mane Kancor Ingredients Private Limited (Mane Kancor) and all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce’s analysis, *see* the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion less-than-fair-value (LTFV) investigation of oleoresin paprika from India based on a request made by Rezolex, Ltd. Co. (the petitioner).⁹ Consequently, the final CVD determination will be issued on the same date as the final LTFV determination, which is currently scheduled to be issued no later than June 15, 2026, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, Commerce calculated individual estimated countervailable subsidy rates for Mane Kancor and Synthite that are not zero, *de minimis*, or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company’s publicly-ranged values for the merchandise under consideration.¹⁰

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Mane Kancor Ingredients Private Limited	18.56
Synthite Industries Pvt. Ltd ..	25.41
All Others	22.95

Suspension of Liquidation

In accordance with section 703(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 703(d)(1)(B) of the Act and 19 CFR 351.107(e), Commerce will instruct CBP to require a cash deposit equal to the estimated company-specific countervailable subsidy rate or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated individual

countervailable subsidy rates determined in this preliminary determination; (2) if both the producer and exporter of the subject merchandise have company-specific estimated subsidy rates determined in this preliminary determination, and their rates differ, then the applicable cash deposit rate will be the higher of these two rates; (3) if either the producer or the exporter, but not both, of the subject merchandise have a company-specific estimated subsidy rate determined in this preliminary determination, the applicable cash deposit rate will be that company’s company-specific rate; and (4) the cash deposit rate for all other producers and exporters will be equal to the estimated all-others subsidy rate.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by Synthite. In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Consistent with 19 CFR 351.224(e), Commerce will analyze and, if appropriate, correct any timely allegations of significant ministerial errors by amending the preliminary determination. However, consistent with 19 CFR 351.224(d), Commerce will not consider incomplete allegations that do not address the significance standard under 19 CFR 351.224(g) following the preliminary determination. Instead, Commerce will address such allegations in the final determination together with issues raised in the case briefs or other written comments.

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 See Petitioner’s Letter, “Request for Alignment of the Countervailing Duty Final Determination with the Companion Antidumping Duty Final Determination,” dated January 2, 2026.

¹⁰ 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* Memorandum, “Calculation of Subsidy Rate for All Others,” dated concurrently.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. 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 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 determination in this investigation. 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, 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 the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and 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. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of oleoresin paprika from India are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: January 29, 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

Scope of the Investigation

The merchandise covered by the scope of this investigation is the coloring additive oleoresin paprika. Oleoresin paprika is a viscous, highly colored liquid in various shades of red or orange made from the extract of Capsicum peppers. Covered merchandise includes all oleoresin paprika, regardless of pepper variety, with an American Spice Trade Association (ASTA) value of at least 500 or a color unit (CU) value of at least 20,000 as determined by spectrophotometric measurement. The Chemical Abstracts Service (CAS) Registry numbers for oleoresin paprika are 68917–78–2 and 84625–29–6; the Center for Food Safety and Applied Nutrition (CFSAN) number is 977006–45–3; the Flavoring Extract Manufacturers' Association (FEMA) number is 2834; and the E number is E160c. Subject oleoresin paprika may also be referred to by other product names, including, but not limited to, paprika oleoresin, oleoresin of paprika, paprika extract, extract of paprika, paprika oil, or paprika essential oil.

Subject oleoresin paprika may be blended with oil or water prior to importation or may be imported in its crude or unstandardized form. Subject oleoresin paprika may also be blended with emulsifiers or preservatives. The scope includes all oleoresin paprika meeting the specifications above regardless of whether or not blended with or soluble in oil or water, and regardless of weight, pungency, quality, solvent content, or additives. Further, the scope includes crude or unstandardized oleoresin paprika that has been blended, finished, packaged, or

otherwise processed in a third country, if the blending, finishing, packaging, or processing performed would not otherwise remove the merchandise from the scope. Oleoresin paprika that is otherwise subject to this investigation is not excluded when commingled with oleoresin paprika from sources not subject to this investigation, or when commingled with other oleoresins. Only the subject component of such commingled products is covered by the scope of this investigation.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 3203.00.8000 and 3301.90.1010. Subject merchandise may also enter under HTSUS subheading 1301.90.9190, 1302.19.9140, and 3205.00.0500. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Injury Test
- IV. Diversification of India's Economy
- V. Preliminary Affirmative Determination of Critical Circumstances, in Part
- VI. Subsidies Valuation
- VII. Benchmarks
- VIII. Analysis of Programs
- IX. Recommendation

[FR Doc. 2026–02345 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–921]

Certain Monomers and Oligomers From the Republic of Korea: Amended Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending its preliminarily affirmative determination in the less-than-fair-value (LTFV) investigation of certain monomers and oligomers (monomers and oligomers) from the Republic of Korea (Korea) to correct for significant ministerial errors. The period of investigation (POI) is January 1, 2024, through December 31, 2024.

DATES: Applicable February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Peter Shaw, AD/CVD Operations, Office

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*.

V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0697.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 2026, Commerce published in the **Federal Register** its preliminary affirmative determination in the LTFV investigation of monomers and oligomers from Korea.¹ On January 5, 2026, the petitioner² timely alleged that Commerce made significant ministerial errors in the *Preliminary Determination*.³

Scope of the Investigation

The products covered by this investigation are monomers and oligomers from Korea. For a complete description of the scope of this investigation, *see* the appendix to this notice.

Framework

A ministerial error is defined as including “errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which {Commerce} considers ministerial.”⁴ A ministerial error is considered to be “significant” if its correction, either singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the preliminary determination; or (2) a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin of greater than *de minimis* or vice versa.⁵ Pursuant to 19 CFR 351.224(e), Commerce “will analyze any comments received and, if appropriate, correct any significant ministerial error

by amending the preliminary determination.”

Analysis of Significant Ministerial Errors

In the *Preliminary Determination*, we find that Commerce made significant ministerial errors within the meaning of section 735(e) of the Act and 19 CFR 351.224(f) and (g)(1) in calculating the estimated weighted-average dumping margins for one of the two mandatory respondents in this investigation, Miwon Specialty Chemicals Co., Ltd. (Miwon). Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending its *Preliminary Determination* to correct for these significant ministerial errors by revising the weighted-average dumping margins for Miwon. Because Miwon’s weighted-average dumping margin was used to compute the “all others” rate, Commerce is also amending its *Preliminary Determination* for all-other producers and/or exporters. For a detailed discussion of the alleged ministerial errors, as well as Commerce’s analysis, *see* the Ministerial Error Memorandum.⁶

Amended Preliminary Determination

As a result of correcting the significant ministerial errors, Commerce determines that the following amended preliminary estimated weighted-average dumping margins exist:

Exporter/producer ⁷	Weighted-average dumping margin (percent)
Miwon Specialty Chemical Co., Ltd	25.07
All Others	28.52

Disclosure

We intend to disclose the calculations performed for this amended preliminary determination to parties within five days after 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).

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates calculated in this amended preliminary determination, in accordance with section 733(d) of the Act. Because this amended preliminary determination results in an increased cash deposit rate, this rate will be effective on the date of publication of this notice in the **Federal Register**. These suspension of liquidation instructions will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: January 30, 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 products subject to this investigation are certain multifunctional acrylate and methacrylate monomers, and acrylated bisphenol-A epoxy based oligomers (collectively, certain monomers and oligomers or CMOs) that are derived from chemical reactions involving the use of acrylic or methacrylic acid. Products within the scope are listed below and have the following Chemical Abstracts Service (CAS) numbers:

CAS No.	Description	Molecular formula
109-16-0	Triethylene glycol dimethacrylate (TEGDMA)	C ₁₄ H ₂₂ O ₆ .
13048-33-4	1,6-hexanediol diacrylate (HDDA)	C ₁₂ H ₁₈ O ₄ .
42978-66-5	Tripropylene glycol diacrylate (TPGDA)	C ₁₅ H ₂₄ O ₆ .
3290-92-4	Trimethylolpropane trimethacrylate (TMPTMA)	C ₁₈ H ₂₆ O ₆ .
15625-89-5	Trimethylolpropane triacrylate (TMPTA)	C ₁₅ H ₂₀ O ₆ .
28961-43-5	Ethoxylated trimethylol-propane triacrylate (EOTMPTA)	(C ₂ H ₄ O) _n (C ₂ H ₄ O) _n (C ₂ H ₄ O) _n C ₁₅ H ₂₀ O ₆ .

¹ See *Certain Monomers and Oligomers from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination, and Extension of Provisional Measures*, 91 FR 244 (January 5, 2026) (*Preliminary*

Determination), and accompanying Preliminary Decision Memorandum.

² The petitioner is Arkema Inc.

³ See Petitioner’s Letter, “Allegation of Ministerial Error,” dated January 5, 2026.

⁴ See section 735(e) of the Tariff Act of 1930, as amended (the Act); *see also* 19 CFR 351.224(f).

⁵ See 19 CFR 351.224(g).

⁶ See Memorandum, “Analysis of Ministerial Error Allegations for the Preliminary Determination,” dated concurrently with this notice (Ministerial Error Memorandum).

⁷ The rates for Green Chemical Co., Ltd.; Green Life Science and Kukdo Chemicals Co. Ltd. remain unchanged from the *Preliminary Determination*.

CAS No.	Description	Molecular formula
57472–68–1	Dipropylene glycol diacrylate (DPGDA)	C ₁₂ H ₁₈ O ₅ .
55818–57–0	Bisphenol-A-epichlorohydrin copolymer acrylate (EPOXY ACRYLATE).	(C ₁₅ H ₁₆ O ₂ ·C ₃ H ₅ ClO) _x ·xC ₃ H ₄ O ₂ .

The monomers are generally known as multifunctional acrylates (MFAs) or multifunctional methacrylates (MFMA) depending on whether the functional groups are acrylate or methacrylate. The monomers generally contain stabilizers/inhibitors, which include but are not limited to Hydroquinone, Methyl Hydroquinone, and Butylated Hydroxy Toluene. The monomers are either difunctional or trifunctional (having 2 or 3 functional groups/molecule), have viscosities of 9 to 15 centipoise (cPs) at 25 degrees Celsius (if difunctional) or 44 to 110 cPs at 25 degrees Celsius (if trifunctional), have (meth)acrylate equivalent weights (molecular weight per number of functional groups) between 99 and 158 and molecular weights between 226 and 472 grams per mol.

The acrylated bisphenol-A epoxy based oligomer is commonly referred to as epoxy acrylate or acrylated epoxy. In contrast to epoxy resin, the main characteristic of the epoxy acrylate oligomer is that it contains acrylate functional groups which make them curable by free-radical polymerization. The epoxy acrylate has a molecular weight between 508 to 536 grams per mol and a viscosity of 2400 to 3600 cPs at 65 degrees Celsius. The epoxy acrylate generally contains stabilizers/inhibitors, which include but are not limited to Hydroquinone, Methyl Hydroquinone, and Butylated Hydroxy Toluene.

Certain monomers and oligomers are subject to the scope even if an in-scope monomer or oligomer is blended or mixed with one or more other in-scope monomers or oligomers. Certain monomers and oligomers in any blend or mixture are also subject to the scope, so long as the blend or mixture contains no less than 20 percent by weight of in-scope CMOs. The scope includes merchandise matching the above description that has been processed in a third country, including by commingling, diluting, introducing, or removing ingredients, or performing any other processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the subject country.

The scope also includes CMOs that are commingled, mixed or blended with in-scope product from sources not subject to this investigation.

Only the subject component(s) of such blends, mixtures or commingled products described above is covered by the scope of this investigation. Subject merchandise contained in a blended, mixed or commingled product described above will not have undergone a chemical reaction as a result of being blended, mixed or commingled.

Notwithstanding the above, specifically excluded from the scope are downstream products, including but not limited to, inks, coatings and overprint varnishes. For

purposes of this exclusion, the downstream product requires only the application of energy to be cured, e.g., inks or varnish applied to packaging, coatings applied to wood flooring, etc. The energy source required to cure the downstream product to its substrate can be thermal, ultraviolet radiation, visible light, electron beam radiation, or infrared radiation.

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2916.12.5050, 2916.14.2050, 3824.99.2900, 3907.29.0000 and 3907.30.0000. Subject merchandise may also be entered under subheadings 2916.12.1000 and 3824.99.9397. The HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes only; the written description of the scope is dispositive.

[FR Doc. 2026–02429 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–112, C–570–113]

Collated Steel Staples From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order and the countervailing duty (CVD) order on collated steel staples from the People's Republic of China would likely lead to the continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD and CVD orders.

DATES: Applicable January 30, 2026.

FOR FURTHER INFORMATION CONTACT: Jack Custard and Leah Kiah, 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) 482–1125, or (240) 956–8621, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 2020, Commerce published in the **Federal Register** the AD and CVD orders on collated steel staples from the People's Republic of China.¹ On June 2, 2025, the ITC instituted,² and Commerce initiated,³ the first sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *Orders* be revoked.⁴

On January 30, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Orders

The merchandise covered by the scope of the *Orders* is certain collated steel staples. Certain collated steel staples subject to these orders are made from steel wire having a nominal diameter from 0.0355 inch to 0.0830 inch, inclusive, and have a nominal leg length from 0.25 inch to 3.0 inches, inclusive, and a nominal crown width from 0.187 inch to 1.125 inch, inclusive. Certain collated steel staples may be manufactured from any type of steel,

¹ See *Certain Collated Steel Staples from the People's Republic of China: Antidumping Duty Order*, 85 FR 43815 (July 20, 2020); see also *Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order*, 85 FR 43813 (July 20, 2020).

² See *Certain Collated Steel Staples from China; Institution of Five-Year Reviews*, 90 FR 23364 (June 2, 2025).

³ See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 23310 (June 2, 2025).

⁴ See *Collated Steel Staples from People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order*, 90 FR 51648 (November 18, 2025), and accompanying Issues and Decision Memorandum (IDM); see also *Certain Collated Steel Staples from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order*, 90 FR 51642 (November 18, 2025), and accompanying IDM.

⁵ See *Certain Collated Steel Staples from China; Determinations*, 91 FR 4108 (January 30, 2026) (ITC Final Determination).

and are included in the scope of the *Orders* regardless of whether they are uncoated or coated, and regardless of the type or number of coatings, including but not limited to coatings to inhibit corrosion.

Certain collated steel staples may be collated using any material or combination of materials, including but not limited to adhesive, glue, and adhesive film or adhesive or paper tape.

Certain collated steel staples are generally made to American Society for Testing and Materials (ASTM) specification ASTM F1667–18a, but can also be made to other specifications.

Excluded from the scope of the *Orders* are any carton-closing staples covered by the scope of the existing antidumping duty order on carton-closing staples from the People's Republic of China. *See Carton-Closing Staples from the People's Republic of China: Antidumping Duty Order*, 83 FR 20792 (May 8, 2018).

Also excluded are collated fasteners commonly referred to as “C-ring hog rings” and “D-ring hog rings” produced from stainless or carbon steel wire having a nominal diameter of 0.050 to 0.081 inches, inclusive. C-ring hog rings are fasteners whose legs are not perpendicular to the crown, but are curved inward resulting in the fastener forming the shape of the letter “C.” D-ring hog rings are fasteners whose legs are straight but not perpendicular to the crown, instead intersecting with the crown at an angle ranging from 30 degrees to 75 degrees. The hog rings subject to the exclusion are collated using glue, adhesive, or tape. The hog rings subject to this exclusion have either a 90 degree blunt point or 15–75 degree divergent point.

Certain collated steel staples subject to the *Orders* are currently classifiable under subheading 8305.20.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). While the HTSUS subheading and ASTM specification are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time

of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be January 30, 2026.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: January 30, 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. 2026–02382 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–814, A–559–808, A–791–824, A–580–899, A–469–819]

Acetone From Belgium, Singapore, the Republic of South Africa, the Republic of South Korea, and Spain: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on acetone from Belgium,

Singapore, the Republic of South Africa (South Africa), the Republic of South Korea (Korea), and Spain would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable February 2, 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 December 20, 2019, Commerce published in the **Federal Register** the AD orders on acetone from Singapore and Spain, on March 31, 2020, Commerce published the AD orders on acetone from Belgium, South Africa, and Korea.¹ On November 1, 2024, 2024, the ITC instituted,² and on November 4, 2024, Commerce initiated,³ the first sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping, and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.⁴

On February 2, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

¹ See *Acetone from Singapore and Spain: Antidumping Duty Orders*, 84 FR 70146 (December 20, 2019) (*Singapore Order* and *Spain Order*) and *Acetone from Belgium, the Republic of South Africa, and the Republic of Korea: Antidumping Duty Orders*, 85 FR 17866 (March 31, 2020) (*Belgium Order*, *South Africa Order*, and *Korea Order*), (collectively, *Orders*).

² See *Acetone from Belgium, Singapore, South Africa, South Korea, and Spain: Institution of Five-Year Reviews*, 89 FR 87399 (November 1, 2024).

³ See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 87543 (November 4, 2024).

⁴ See *Acetone from Belgium, the Republic of Korea, Singapore, the Republic of South Africa, and Spain: Final Results of the First Expedited Sunset Reviews of the Antidumping Duty Orders*, 90 FR 11510 (March 7, 2025), and accompanying Issues and Decision Memorandum (IDM).

⁵ See *Acetone from Belgium, Singapore, South Africa, South Korea, and Spain: Determinations*, 91 FR 4628 (February 2, 2026) (*ITC Final Determination*).

⁶ See *ITC Final Determination*.

Scope of the Orders

The merchandise covered by these *Orders* is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as β -ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O , with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

The scope also includes acetone that is commingled with acetone from sources not subject to the *Orders*.

For combined and commingled products, only the acetone component is covered by the scope of the *Orders*. However, when acetone is combined with acetone components from sources not subject to the *Orders*, those third country acetone components may still be subject to other acetone proceedings.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (e.g., methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from the *Orders*.

A combination or mixture is excluded from the *Orders* if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by these *Orders* is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000,

3814.00.5010, and 3814.00.5090. This list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be February 2, 2026.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: February 3, 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. 2026–02410 Filed 2–5–26; 8:45 am]

BILLING CODE 3510–DS–P

⁶ See ITC Final Determination.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF508]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public webinar to collect input on the Private Recreational Tilefish Permitting and Reporting Framework.

DATES: The meeting will be held on Monday, March 2, 2026, from 6 p.m.–8 p.m. ET. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the Council's calendar prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council (Council) will host a webinar to collect public input on the Private Recreational Tilefish Permitting and Reporting Framework. The Council is seeking feedback to consider the draft alternatives to modify and/or streamline the current private recreational tilefish permit and reporting requirements. The intent of this framework is to consider changes to the private recreational tilefish permitting and reporting program to ensure that the regulatory approach is appropriate, effective, and proportionate to the data needs for managing blueline and golden tilefish. This action seeks to identify an approach that reduces unnecessary regulatory burden, improves clarity and enforceability of the reporting requirements, and supports the collection of reliable information needed for stock assessment and management. The alternatives currently under consideration include (1) eliminating the permit and/or reporting requirements all together, (2) modifying the trip reporting requirements, and/or

(3) modifying the trip report submission timeframe.

The primary target audience for this webinar includes (a) any private recreational angler that targets or fishes for tilefish from Virginia north, (b) any member of the public with knowledge regarding private recreational reporting, and (c) any member of the public who wishes to provide comments or recommendations on these regulations. Additional information, background documents, and instructions for providing written comments will be posted to the Council's website at: <https://www.mafmc.org/>.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526-5251 at least 5 days prior to the meeting date.

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

Dated: February 4, 2026.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026-02432 Filed 2-5-26; 8:45 am]

BILLING CODE 3510-22-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete product(s) previously furnished by such agencies.

DATES: Comments must be received on or before: March 07, 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: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51-2.4(b), Government personnel within the contracting activity have identified this as a product requirement not applicable to other Federal entities and has requested the Committee consider granting a purchase or distribution preference if the product is added to the Procurement List. *See* 71 FR 69536 (Dec. 1, 2006). If the Committee grants this request, the product will not be available through the U.S. AbilityOne Commission's Commercial Distribution Program. The Committee will consider this request along with relevant comments received from interested parties.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed

Product(s)

NSN(s)—Product Name(s):

6545-01-689-9365—Kit, Standard Vehicle, Medical

Authorized Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEPT OF DEFENSE, DLA TROOP SUPPORT

The following product(s) are proposed for deletion to the Procurement List:

Product(s)

NSN(s)—Product Name(s):

7510-00-NIB-0364—Coaster Set, Wooden

Mandatory For: Total Government Requirement

Contracting Activity: GENERAL SERVICES ADMINISTRATION, GSA/FAS ADMIN SVCS ACQUISITION BR(2)

2590-01-609-3878—Combat Identification Panel Assembly, Stryker Platform, Side, Brown

2590-01-398-6740—Combat Identification Kit, M992 FAASV Platform, Tan, Aluminum Alloy

2590-01-398-6743—Combat Identification Assembly, M93A1 NBCRS (Fox) Platform, Rear, Brown

2590-01-398-6744—Combat Identification Assembly, M93A1 NBCRS (Fox) Left Side, Brown

2590-01-398-6746—Combat Identification Assembly, M109 PALADIN Platform, Side, Brown

2590-01-398-6748—Combat Identification Assembly, M109 PALADIN Platform, Rear, Brown

2590-01-398-8075—Front or Rear Panel Assembly, Combat Identification Panel Kit, Thermal, Non-Armored, FMTV and HEMTT

2590-01-398-8078—Combat Identification Assembly, High Mobility Multi-Wheel Vehicle (HMMWV) ECV Platform, Side, Brown

2590-01-398-8080—Combat Identification Assembly, High Mobility Multi-Wheel Vehicle (HMMWV) ECV Platform, Rear, Brown

2590-01-398-8086—Combat Identification Assem, High Mobility Multi-Wheel Vehicle (HMMWV) Basic Armour, Brown

2590-01-399-2932—Combat Identification Assem, HMMWV, Basic Armour, Brown

2590-01-399-2935—Combat Identification Assembly, M9 Ace Platform, Front, Brown

2590-01-399-2937—Combat Identification Assembly, M9 Ace Platform, Rear, Brown

2590-01-609-3872—Combat Identification Assembly, Stryker Platform, Front, Brown

2590-01-609-3882—Combat Identification Assembly, Airborne Threat Detector, Stryker Platform, Brown

Mandatory For: DEPT OF THE ARMY

Contracting Activity: DEPT OF THE ARMY, W6QK ACC-APG NATICK

2530-01-337-7324—Parts Kit, Air Filter

Mandatory For: DEFENSE LOGISTICS AGENCY

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA LAND AND MARITIME

7510-01-633-7856—Toner Cartridge, Remanufactured, Lexmark E350/E352 Series

7510-01-633-7857—Toner Cartridge, Remanufactured, Lexmark E450 Series

Mandatory For: Total Government Requirement

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2)

7510-01-641-9544—Toner Cartridge, Remanufactured, Lexmark Optra T644/X644/X646 Series

7510-01-659-0096—Toner Cartridge, Remanufactured Dell 1720 Series

7510-01-659-0100—Toner Cartridge, Remanufactured Dell 1700 and 1710 Series

7510-01-659-0097—Toner Cartridge, Remanufactured Dell 5530dn/5535dn Series

7510-01-677-4486—Toner Cartridge, Remanufactured Dell B1260dn/B1260dnf/B1265dnf/B1265dfw Series

7510-01-677-4485—Toner Cartridge, Remanufactured Dell 2335dn Series

7510-01-677-4488—Toner Cartridge, Remanufactured Dell 2355n Series

7510-01-677-4490—Toner Cartridge, Remanufactured Dell B5460dn/B5465dnf Series, Black ink, 25000 Page Yield

Mandatory For: Total Government Requirement

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2)

7510-01-689-1060—Toner Cartridge, Remanufactured, HP 312A Series, Black Ink

7510-01-689-1050—Toner Cartridge, Remanufactured, HP 312X Series, Black Ink

7510-01-689-1049—Toner Cartridge, Remanufactured, HP 312A Series, Cyan Ink

7510-01-689-1046—Toner Cartridge, Remanufactured, HP 312A Series, Yellow Ink

7510-01-689-1048—Toner Cartridge, Remanufactured, HP 312A Series, Magenta Ink

7510-01-689-1059—Toner Cartridge, Remanufactured, HP 90XJ Series, Black Ink
 7510-01-691-5767—Toner Cartridge, Remanufactured, Xerox 108R00795, Black
 7510-01-590-1504—Toner Cartridge, Remanufactured, HP 53 A & 53 X Series
 7510-01-590-1505—Toner Cartridge, Remanufactured, HP 51A & 51X Series
 7510-01-660-3971—Toner Cartridge, Remanufactured, Standard Yield, Black, HP CP 1525NW/CM1415FNW
 7510-01-660-3973—Toner Cartridge, Remanufactured, Standard Yield, Cyan, HP CP 1525NW/CM1415FNW
 7510-01-660-3974—Toner Cartridge, Remanufactured, Standard Yield, Magenta, HP CP 1525NW/CM1415FNW
 7510-01-660-4950—Toner Cartridge, Remanufactured, Standard Yield, Yellow, HP CP 1525NW/CM1415FNW
 7510-01-560-6574—Toner Cartridge, Remanufactured, HP LJ 4100 Series
 7510-01-560-6575—Toner Cartridge, Remanufactured, HP LJ 2100/2200 Series
 7510-01-560-6577—Toner Cartridge, Remanufactured, HP LJ 4000/4000T/4000N/4000TN/4050 Series
Mandatory For: Total Government Requirement
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2)

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-02347 Filed 2-5-26; 8:45 am]

BILLING CODE 6353-01-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 and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* March 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 29, 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 60683) The Committee determined that the services listed below are suitable for procurement by the Federal Government and has added these services to the Procurement List as a mandatory purchase for the contracting activities listed. In accordance with 41 CFR 51-5.3(b), the mandatory purchase requirement is limited to contracting activities at the locations listed and in accordance with 41 CFR 51-5.2, the Committee has authorized the listed nonprofit agencies as the authorized source(s) of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

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(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service Type: Document Destruction
Mandatory for: US Air Force, Oklahoma City-Air Logistics Complex, 7858 5th Street, Tinker, AFB, OK

Designated Source of Supply: The Meadows Center for Opportunity, Inc., Edmond, OK

Contracting Activity: DEPT OF THE AIR FORCE, FA8132 AFSC PZIMC

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated due to the

requirements of the DEPT OF THE AIR FORCE. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the AbilityOne Program. To avoid performance disruption, and the possibility that the DEPT OF THE AIR FORCE will refer its business elsewhere, this addition must be effective on 2/25/2026, ensuring timely execution for a 3/1/2026 start date. The Committee published an initial notice of proposed Procurement List addition in the **Federal Register** on 12/29/2025 (90 FR 60683) but did not receive any comments. This addition will not create a public hardship and has limited effect on the public at large. Rather, this addition will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition enables the Federal customer to continue operations without interruption.

Service Type:

Mandatory for: Department of Veterans Affairs, Memphis VA Medical Center and Outpatient Clinics, Memphis, TN, 116 N Pauline Street, Memphis, TN
Designated Source of Supply: Wiregrass Rehabilitation Center, Inc., Dothan, AL
Contracting Activity: DEPARTMENT OF VETERANS AFFAIRS, 249-NETWORK CONTRACT OFC 9(00249)

Deletion

On January 2, 2026, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. (91 FR 128) This notice was published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

*Product(s)**NSN(s)—Product Name(s):*

5120-01-598-5652—Splitting Maul—6 lb, Sledge Eye, 36" Fiberglass Handle

5120-01-598-5656—Splitting Maul—8 lb, Sledge Eye, 36" Fiberglass Handle

Authorized Source of Supply: Keystone Vocational Services, Inc., Sharon, PA

Mandatory For: Total Government Requirement

Contracting Activity: GENERAL SERVICES ADMINISTRATION, FAS HEARTLAND REGIONAL ADMINISTRATO
TID 60638

NSN(s)—Product Name(s):

7920-01-215-6569—Cloth, Synthetic Shammy, Orange, 20" x 23"

Authorized Source of Supply: Industries Blind and Visually Impaired, Inc., West Allis, WI

Mandatory For: Total Government Requirement

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI

Contracting Activity: DEPT OF VETERANS AFFAIRS, STRATEGIC ACQUISITION CENTER
TID 60639

NSN(s)—Product Name(s):

7420-01-617-1743—Talking Calculator, 508 Compliant, 12 Digit, Portable, Desktop, Battery Operated

Authorized Source of Supply: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI

Mandatory For: Total Government Requirement

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2
TID 60640

NSN(s)—Product Name(s):

5340-00-WIM-0076—Lanyard, 2 pc. Health Care

5340-00-WIM-0079—Lanyard, Red, White & Blue NASCAR

7045-00-NIB-0441—Navy Promotional Items, Digital Camouflage iPad Case with Navy Logo

7045-00-NIB-0442—Navy Promotional Items, Navy Screen Printed iPad Case with Navy Logo

7350-00-NIB-0147—Mug, 14oz. Blue Acrylic Mug, Health Care

7350-00-WIM-0149—Mug, 16oz. American Pride Travel Mug

7350-00-WIM-0150—Mug, 11oz. Acrylic Mug, Chaplain Corps

7350-00-WIM-0152—Mug, Acrylic, Navy Reserve, Transparent/Blue, 14oz.

7510-00-WIM-0535—Pencil, Carpenter, Navy Reserve, Yellow or Navy Blue, 7 1/16" x 5/16"

7510-01-WIM-0100—Binder, 3 Ring, Navy Promotional, Chaplain, Letter, Navy Blue, 1"

7510-01-WIM-0105—3 Ring Binder

7510-01-WIM-0120—Book Cover, Navy Recruiting, Stretchable, 16 cm x 31 cm

7520-00-WIM-1472—Pen, Blue Lacq.—Health Care

7520-00-WIM-1473—Pen, Twist, Metal, Refillable, Navy Reserve, Blue Lacquered, Black Ink, Medium Pt.

7830-00-WIM-0012—Beverage Can Cooler, Blue w/3Color Imprint, NASCAR

7830-00-WIM-0026—Mini Pouch w/Ear Plugs, NASCAR

8405-00-WIM-0175—Ballcap, Recruiting and Promotional Materials, Better Quality, USN

8405-00-WIM-0176—Ballcap, Chaplain, Recruiting and Promotional Materials, USN

8405-00-WIM-0178—Ballcap, Recruiting and Promotional Materials, USN Reserve

8415-00-NIB-0141—Suit, Warm-Up, U.S. Navy, Navy Blue, Small

8415-00-NIB-0142—Suit, Warm-Up, U.S. Navy, Navy Blue, Medium

8415-00-NIB-0143—Suit, Warm-Up, U.S. Navy, Navy Blue, Large

8415-00-NIB-0144—Suit, Warm-Up, U.S. Navy, Navy Blue, X-Large

8415-00-NIB-0157—T-Shirt, Recruiting and Promotional Materials, Healthcare, USN, White, Large

8415-00-NIB-0158—T-Shirt, Recruiting and Promotional Materials, Healthcare, USN, White, -Large

8415-00-WIM-0170—Polo Shirt, Chaplain, Recruiting and Promotional Materials, USN, Dark, Large

8415-00-WIM-0171—Polo Shirt, Chaplain, Recruiting and Promotional Materials, USN, Dark, X-Large

9905-00-NIB-0089—Luggage Tag, Healthcare

9905-00-WIM-0092—Temporary Tattoos, NASCAR

9905-00-WIM-0095—Ruler, Notable African American

9905-00-WIM-0216—PLUSH SHAPE

9905-00-WIM-0217—Plush Bear

9905-00-WIM-0300—NASCAR Kit (up to 8 items in plastic bag)

Authorized Source of Supply: MidWest Enterprises for the Blind, Inc., Kalamazoo, MI

Mandatory For: DEPT OF THE NAVY

Contracting Activity: DEPT OF THE NAVY, US FLEET FORCES COMMAND

Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR NORFOLK

Contracting Activity: DEPT OF THE NAVY, W39L USA NG READINESS CENTER
TID 60641

NSN(s)—Product Name(s):

7930-00-NIB-0212—Cleaner, Heavy Duty Glass, Concentrate, 2 Liter

Authorized Source of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX

Mandatory For: DEPT OF THE VETERANS AFFAIRS

Contracting Activity: DEPT OF VETERANS AFFAIRS, 241-NETWORK CONTRACT OFC 01(00241)

TID 60642

NSN(s)—Product Name(s):

8405-01-547-2559—Poncho Liner, Wet Weather, U.S. Army, Universal Camouflage

Authorized Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS

AGENCY, DLA TROOP SUPPORT
TID 60643

NSN(s)—Product Name(s):

8465-01-524-7309—Pouch, Bandoleer Ammunition, 6 Magazine, Universal Camouflage

Authorized Source of Supply: Mississippi Industries for the Blind (Inc), Jackson, MS

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
TID 60644

NSN(s)—Product Name(s):

8465-01-525-5531—Hydration System, MOLLE, Universal Camouflage

Authorized Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
TID 60645

NSN(s)—Product Name(s):

8530-00-080-6341—Toothbrush, Adult, 6"

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
TID 60646

NSN(s)—Product Name(s):

6520-00-890-2080—Dental Kit, Adult

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
TID 60647

NSN(s)—Product Name(s):

6520-00-086-6554—Dental Kit, Child

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
TID 60648

NSN(s)—Product Name(s):

6520-01-063-7477—Floss, Dental, Waxed, 100 Yards

6520-01-063-7477—Floss, Dental, Waxed, 200 Yards

Mandatory For: DEPT OF DEFENSE

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2026-02348 Filed 2-5-26; 8:45 am]

BILLING CODE 6353-01-P

CONSUMER FINANCIAL PROTECTION BUREAU

[Docket No. CFPB-2026-0006]

Agency Information Collection Activities: Comment Request

AGENCY: Consumer Financial Protection Bureau.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (CFPB or Bureau) is requesting to revise an existing

information collection titled “Report of Terms of Credit Card Plans (Form FR 2572) and Consumer and College Credit Card Agreements” approved under OMB Control Number 3170–0001.

DATES: Written comments are encouraged and must be received on or before April 7, 2026 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* PRA_Comments@cfpb.gov. Include Docket No. CFPB–2026–0006 in the subject line of the email.

- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: CFPB_PRA@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Report of Terms of Credit Card Plans (Form FR 2572) and Consumer and College Credit Card Agreements.

OMB Control Number: 3170–0001.

Type of Review: Revision of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Respondents: 665.

Estimated Total Annual Hours: 564.

Abstract: The Bureau intakes different forms of credit card data from credit card issuers, as required by the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* and implementing regulations.

1. Information Collection

The Bureau implements three credit card data information collections:

(a) *Terms of Credit Card Plans Survey:* TILA section 136(b) requires the Bureau to collect data on credit card pricing and availability from a sample of at least 150 issuers, including the 25 largest issuers of credit cards and not less than 125 additional financial institutions selected by the Bureau.

(b) *Credit Card Quarterly Agreement Submission:* section 204 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), amending TILA, and 12 CFR 1026.58 requires card issuers with 10,000 or more open accounts to submit to the Bureau agreements between the issuer and a consumer under a credit card account for an open-end consumer credit plan.

(c) *College Credit Card Annual Agreement Submission:* section 305 of the CARD Act, amending TILA, and 12 CFR 1026.57(d), require card issuers to submit to the Bureau any college credit card agreements to which the issuer is a party and certain additional information regarding those agreements.

The data collections enable the Bureau to provide Congress and the public with a centralized and searchable repository for terms of credit card plans, consumer credit card agreements, college credit card agreements and information regarding the arrangements between financial institutions and institutions of higher education.

2. Modifications to the TCCP Survey

Beginning with the January 1–June 30, 2025 TCCP Survey, the Bureau developed a new sampling approach to be more consistent with the tenets of the Restoring Gold Standard Science Executive Order (E.O.14303). First, the CFPB expanded the sampling frame beyond the approximately 700 credit card issuers already in its Collect system to about 2,200 banks and credit unions with credit card balances exceeding \$1 million as reported in the issuer’s most recent Call Report. Second, the CFPB employed a stratified random sampling procedure to select firms that would be asked to participate in the survey.

Previously, sampling frames were limited to the population of financial institutions with 10,000 or more open accounts that are required to submit credit card agreements to the CFPB through the Collect system. The new approach added credit card issuers with fewer than 10,000 open accounts that had not previously participated in the CFPB’s credit card agreement or survey collections.

The Bureau is considering a number of options for future survey cycles to meet the requirements of TILA, adhere to tenets of Gold Standard Science, and

minimize unnecessary burden on financial institutions. The options include:

- (a) Making no additional changes;
- (b) Modifying the sample selection methodology to make the likelihood of selecting a financial institution proportional to the size of its credit card balances; or
- (c) Selecting a new survey panel each biannual cycle, rather retaining some financial institutions across cycles, and increasing the number of annual respondents from 225 to 450.

Comments are invited on the Bureau’s approach to selecting institutions to participate in the survey and the burden considerations for smaller credit card issuers.

The Bureau will consider revising the Estimated Number of Respondents and Estimated Total Annual Hours higher to reflect changes to the sampling approach.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau’s estimate of the burden of the collection of information, including the validity of the methods and the 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. Comments submitted in response to this notice will be summarized and/or included in the request for OMB’s approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2026–02456 Filed 2–5–26; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25–1J]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233,
 urooj.zahra.civ@mail.mil, or
 dsca.ncr.rsrcmgmt.list.cns-mbx@
 mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)
 arms sales notification is published to

fulfill the requirements of section 155 of
 Public Law 104-164 dated July 21,
 1996. The following is a copy of a letter
 to the Speaker of the House of
 Representatives with attached
 Transmittal 25-1J.

Dated: February 4, 2026.

Stephanie J. Bost,

*Alternate OSD Federal Register Liaison
 Officer, Department of Defense.*

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
 2800 Defense Pentagon
 Washington, DC 20301-2800

November 26, 2025

The Honorable Mike Johnson
 Speaker of the House
 U.S. House of Representatives
 H-209, The Capitol
 Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-1J. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 21-43 of May 24, 2021.

Sincerely,


 Michael F. Miller
 Director

Enclosure:
 1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 25-1J

**REPORT OF ENHANCEMENT OR
 UPGRADE OF SENSITIVITY OF
 TECHNOLOGY OR CAPABILITY (SEC.
 36(B)(5)(C), AECA)**

(i) *Purchaser:* Government of Spain
 (ii) *Sec. 36(b)(1), AECA Transmittal*
 No.: 21-43
 Date: May 24, 2021
 Military Department: Air Force
 (iii) *Description:* On May 24, 2021,
 Congress was notified by congressional
 certification transmittal number 21-43
 of the possible sale, under Section
 36(b)(1) of the Arms Export Control Act,
 of the Government of Spain's request to
 buy follow on Contractor Logistics
 Support to include contractor provided
 MQ-9A Blk 5 aircraft components,
 spares, and accessories; repair and
 return; software and software support

services; simulator software; personnel
 training and training equipment;
 publications and technical
 documentation; United States (U.S.)
 Government and contractor provided
 engineering, technical and logistical
 support services; and other related
 elements of logistical and program
 support. The total estimated program
 cost was \$110 million. There was no
 Major Defense Equipment (MDE)
 associated with this sale.

On August 8, 2024, Congress was
 notified by congressional certification
 transmittal number 0G-24 of the
 addition of the following non-MDE
 items: modification kits, M299
 launchers, and BRU-71 pylons to enable
 the employment of weapons on the
 previously notified MQ-9 Remotely
 Piloted Aircraft; personnel training and
 training equipment; publications and

technical documentation; U.S.
 Government and contractor engineering,
 technical, and logistics support services;
 and other related elements of logistics
 and program support. The estimated
 total value of added non-MDE articles
 and services was \$11.6 million. The
 estimated total case value remained at
 \$110 million. There was no MDE
 associated with this sale.

This transmittal notifies an extension
 of the previously notified technical
 support services; U.S. Government and
 contractor engineering, technical, and
 logistics support services; and other
 related elements of logistics and
 program support for the MQ-9
 unmanned aerial system. The estimated
 total cost of the newly extended, non-
 MDE services is \$200 million. The
 estimated total case value will increase
 by \$200 million to a revised \$310

million. There is no MDE associated with this potential sale.

(iv) *Significance*: This proposed sale will support Spain's effort to build intelligence, surveillance, and reconnaissance (ISR) and strike capabilities.

(v) *Justification*: This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a NATO Ally which is an important force for political stability and economic progress in Europe.

(vi) *Sensitivity of Technology*: The Sensitivity of Technology Statement contained in the original notification applies to items reported here. The highest level of classification of defense articles, components, and services

included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress*: November 26, 2025

[FR Doc. 2026-02399 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-78]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-78 and Policy Justification.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

DEC 01 2025

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-78, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost \$500 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-78

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$500 million

TOTAL \$500 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-Major Defense Equipment:

The following non-MDE items will be included: initial through advanced rotary-wing flight and maintainer training for personnel of the Royal Saudi Land Forces Aviation Corps (RSLFAC) under sponsorship of the United States (U.S.) Army Training and Doctrine Command (TRADOC). The training will be conducted by U.S. Army instructors on the AH-64E Apache, CH-47F Chinook, UH-72A Lakota, and UH-60L/M Black Hawk Helicopters.

(iv) *Military Department:* Army (SR-B-OTA)

(v) *Prior Related Cases, if any:* SR-B-OPA, SR-B-OTT, SR-B-OPF, SR-B-OPT, SR-B-OPO

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 1, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—Blanket Order Training

The Kingdom of Saudi Arabia has requested to buy blanket order aviation training services for the Royal Saudi Land Forces Aviation Corps (RSLFAC) from the U.S. Army. The following non-

MDE items will be included: initial through advanced rotary-wing flight and maintainer training for personnel of the (RSLFAC) under sponsorship of the U.S. Army Training and Doctrine Command (TRADOC). The training will be conducted by U.S. Army instructors on the AH-64E Apache, CH-47F Chinook, UH-72A Lakota, and UH-60L/M Black Hawk Helicopters. The estimated total cost is \$500 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by improving the security of a partner country that is a force for political stability and economic progress in the Gulf Region.

The proposed sale will enhance Saudi Arabia's capability to meet current and future threats by providing initial through advanced aviation operator and maintainer training for the safe and professional operation of the RSLFAC's U.S.-procured helicopter fleet. The Kingdom of Saudi Arabia will have no difficulty absorbing the training into its armed forces.

The proposed sale of this training will not alter the military balance in the region.

This training will be provided at various CONUS based U.S. Army

training sites under sponsorship of the U.S. Army Training and Doctrine Command (TRADOC). At this time, the U.S. government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. government or contractor representatives to the Kingdom of Saudi Arabia.

There will be no adverse impact on defense readiness as a result of this proposed sale.

[FR Doc. 2026-02401 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-95]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-95, Policy Justification, and Sensitivity of Technology.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

November 24, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-95, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of the United Kingdom for defense articles and services estimated to cost \$200 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-95

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of the United Kingdom

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 75 million
Other	\$125 million

TOTAL \$200 million

(iii) *Description and Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales (FMS) case UK-P-LYN was below the congressional notification threshold at \$41.02 million (\$14.63 million in MDE) and included two (2) Advanced Extremely High Frequency (AEHF) Navy Multiband Terminals (NMT), as well as non-MDE KGV-136R COMSEC devices

and other communications equipment. The Government of the United Kingdom has requested that the case be amended to include an additional six (6) AEHF NMTs. This amendment will cause the case to exceed the notification threshold, and thus notification of the entire program is required. The above notification requirements are combined as follows:

Major Defense Equipment (MDE):

Eight (8) Advanced Extremely High

Frequency Navy Multiband Terminals

Non-Major Defense Equipment:

The following non-MDE items will also be included: KGV-136R communications security devices; communications equipment; submarine high data rate masts; ancillary equipment; containers; integration and test support; spare and repair parts; publications and technical documentation; personnel training and training equipment; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Navy (UK-P-LYN)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 24, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom—Navy Multiband Terminals

The Government of the United Kingdom has requested to buy an additional six (6) Advanced Extremely High Frequency (AEHF) Navy Multiband Terminals (NMT) that will be added to a previously implemented case whose value was under the congressional notification threshold. The original Foreign Military Sales (FMS) case, valued at \$41.02 million (\$14.63 million in MDE), included two (2) AEHF NMTs. This notification is for a combined total of eight (8) AEHF NMTs. The following non-MDE items will also be included: KGV-136R communications security devices; communications equipment; submarine high data rate masts; ancillary equipment; containers; integration and test support; spare and repair parts; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$200 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by improving the security of a key NATO Ally that is an

important force for political stability and economic progress in Europe.

The proposed sale will improve the United Kingdom's capability to meet current and future threats by ensuring communications interoperability. The United Kingdom will have no difficulty absorbing these articles and services into its armed forces. The UK Royal Navy will install the NMT system aboard Dreadnought submarines to enable AEHF satellite communications to Royal Navy and Minister of Defence shore sites, ships, and submarines in a non-contested threat environment.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Arlington, VA. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No 25-95

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Advanced Extremely High Frequency Navy Multiband Terminal (AEHF NMT) is the next generation of maritime military satellite communications (SATCOM) terminal for the Navy and its coalition partners. The Navy uses it for accessing protected and survivable SATCOM over the AEHF SATCOM constellation. In addition, NMT provides access to wideband communications through the Defense Satellite Communications System (DSCS) and Wideband Global SATCOM (WGS) constellations. The NMT is interoperable with the current and legacy service SATCOM terminals, including the family of advanced beyond-line-of-sight terminals, secure mobile anti-jam reliable tactical terminals, and follow-on terminals. The NMT provides communications interoperability for at-sea assets in non-contested threat environments. The system includes AEHF communications security KGV-136R National Security Agency Type 1 releasable controlled

cryptographic items, enabling secure anti-jam communications.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the United Kingdom can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of the United Kingdom.

[FR Doc. 2026-02398 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-1D]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-1D.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

NOV 24 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-1D. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 18-07 of July 26, 2018.

Sincerely,


Michael J. Miller
Director

Enclosure:

1. Transmittal
2. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-1D

**REPORT OF ENHANCEMENT OR
UPGRADE OF SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C), AECA)**

(i) *Prospective Purchaser:* Government of Bahrain

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 18-07

Date: July 26, 2018

Implementing Agency: Navy
Funding Source: National Funds

(iii) *Description:* On July 26, 2018, Congress was notified by congressional certification transmittal number 18-07 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of items and services in support of Follow-On Technical Support (FOTS) for the Royal Bahrain Navy Ship

SABHA (FFG-90), formerly USS Jack Williams (FFG-24), transferred as Excess Defense Articles on September 13, 1996. Also included were engineering, technical, and logistics services, documentation, and modification material for United States (U.S.) Navy supplied systems and equipment and other related elements of logistics and programs support. The estimated total cost was \$70 million. There was no Major Defense Equipment (MDE) associated with this sale.

This transmittal notifies Congress of the inclusion of the following non-MDE: items and services in support of follow-on technical support (FOTS) for various vessels consisting of three classes of Royal Bahrain Navy ships and vessels transferred as excess defense articles from the U.S. Navy to the Bahrain Navy.

The following are also included: engineering, technical, and logistics services; documentation; modification material for U.S. Navy supplied systems and equipment; and other related elements of logistics and programs support. The estimated total cost of the new items is \$430 million. The estimated total case value will increase by \$430 million to a revised \$500 million. There is no MDE associated with this sale.

(iv) *Significance:* This notification is being provided as the additional non-MDE items were not enumerated in the original notification. The inclusion of these items represents an increase in capability over what was previously notified. The proposed sale will support Bahrain's defense by maintaining the

operational readiness of Bahrain navy ships.

(v) *Justification:* This proposed sale will support the foreign policy goals and national security objectives of the U.S. by improving the security of a major non-NATO ally that is an important force for political stability and economic progress in the Middle East.

(vi) *Date Report Delivered to Congress:* November 24, 2025

[FR Doc. 2026-02397 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-91]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or

dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-91, Policy Justification, and Sensitivity of Technology.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

November 18, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-91, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Ukraine for defense articles and services estimated to cost \$105 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001–FR–C

Transmittal No. 25–91

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Ukraine

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$105 million
TOTAL	\$105 million

Funding Source: JUMPSTART

Funding from Germany

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-Major Defense Equipment:

The following non-MDE items will be included: sustainment related articles and services for the PATRIOT air defense system, including the upgrade of M901 launchers to M903 configuration; classified and unclassified prescribed load lists and authorized stockage lists for ground support equipment; other necessary services, ancillaries, spare parts, support, training, and accessories; and other related elements of logistics and program support.

(iv) *Military Department:* Army (JU–B–UAE)

(v) *Prior Related Cases, if any:* UP–B–UDC and USAI Cases NX–B–VAB, NW–B–WMA, NW–B–WME, KA–B–WAM, KA–B–WAZ, KA–B–WBA, KA–B–WBB, KA–B–WDE

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 18, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Ukraine—PATRIOT Air Defense System Sustainment

The Government of Ukraine has requested to buy sustainment related articles and services for the PATRIOT air defense system, including the upgrade of M901 launchers to M903 configuration; classified and unclassified prescribed load lists and authorized stockage lists for ground

support equipment; other necessary services, ancillaries, spare parts, support, training, and accessories; and other related elements of logistics and program support. The estimated total cost is \$105 million.

This proposed sale will support the foreign policy and national security objectives of the United States (U.S.) by improving the security of a partner country that is a force for political stability and economic progress in Europe.

The proposed sale will improve Ukraine's ability to meet current and future threats by further equipping it to conduct self-defense and regional security missions with a more robust local sustainment capability. Ukraine will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be RTX Corporation, located in Arlington, VA, and Lockheed Martin, located in Bethesda, MD. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will require the assignment of approximately five additional U.S. Government and fifteen U.S. contractor representatives to the European Combatant Command for the duration of up to one month to support training and periodic meetings.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25–91

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The PATRIOT air defense system contains sensitive and critical technology. The M903 upgrade will allow for deployment of all the munitions fieldable with the M902 configuration as well as the PATRIOT Advanced Capability-3 (PAC-3) Missile Segment Enhanced (MSE) munition. The MSE variant of the PAC-3 is the next generation of hit-to-kill interceptors and provides expanded battlespace against evolving threats.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Ukraine can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Ukraine.

[FR Doc. 2026–02393 Filed 2–5–26; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 25–107]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695–6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25–107, Policy Justification, and Sensitivity of Technology.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

November 19, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-107, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of India for defense articles and services estimated to cost \$47.1 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,


Michael E. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-107

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of India

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$39.5 million
Other	\$ 7.6 million

TOTAL \$47.1 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Up to two hundred sixteen (216)
M982A1 Excalibur tactical
projectiles

Non-Major Defense Equipment:

The following non-MDE items will also be included: ancillary items; Portable Electronic Fire Control Systems (PEFCS) with Improved Platform Integration Kit (iPIK); primers; propellant charges; United States (U.S.) Government technical assistance; technical data; repair and return services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (IN-B-UNA)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* November 19, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India—Excalibur Projectiles

The Government of India has requested to buy up to two hundred sixteen (216) M982A1 Excalibur tactical projectiles. The following non-MDE items will also be included: ancillary items; Portable Electronic Fire Control Systems (PEFCS) with Improved Platform Integration Kit (iPIK); primers; propellant charges; U.S. Government technical assistance; technical data; repair and return services; and other related elements of logistics and program support. The estimated total cost is \$47.1 million.

This proposed sale will support the foreign policy and national security objectives of the U.S. by helping to strengthen the U.S.-Indian strategic relationship and to improve the security of a major defense partner which continues to be an important force for political stability, peace, and economic progress in the Indo-Pacific and South Asia regions.

The proposed sale will improve India's capability to meet current and future threats by providing precision capability equipment, which will increase first strike accuracy in its brigades. India will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be RTX Corporation, located in Arlington, VA. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to India.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-107

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The M982A1 Excalibur 155 mm high explosive projectile is an all-up projectile with global positioning system (GPS) aided precision guidance capability provided by either Selective Availability Anti-Spoofing Module (SAASM) or M-Code. The Excalibur provides the ability to accurately engage targets at distances up to 25 miles. Excalibur is commonly fired from U.S. Army and Marine Corps towed and self-propelled howitzer systems, including the M777 and M109.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that India can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of India.

[FR Doc. 2026-02395 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-1B]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-1B.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

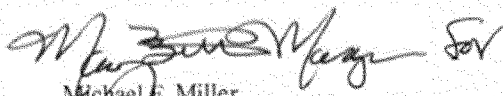
November 20, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 25-1B. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 24-83 of September 9, 2024.

Sincerely,


Michael F. Miller
Director

Enclosure:

1. Transmittal

BILLING CODE 6001-FR-C

Transmittal No. 25-1B

**REPORT OF ENHANCEMENT OR
UPGRADES IN SENSITIVITY OF
TECHNOLOGY OR CAPABILITY (SEC.
36(B)(5)(C) AECA)**

(i) *Prospective Purchaser:* Government of Singapore

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 24-83

Date: September 9, 2024

Implementing Agency: Air Force

Funding Source: National Funds

(iii) *Description:* On September 9, 2024, Congress was notified by congressional certification transmittal number 24-83 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of fifty-four (54) AIM-120 C8 Advanced Medium Range Air-to-Air Missiles (AMRAAM); and two (2) AIM-120C-8 AMRAAM guidance sections. Also included were AMRAAM control section spares, missile containers, and support equipment; Common Munitions Built-In-Test (BIT)/Reprogramming Equipment (CMBRE); ADU-89/E Adapter Group Computer Test Set; spare parts, consumables and accessories, and repair and return support; weapon

system support and software, and classified software delivery and support; classified and unclassified publications and technical documentation; training support and equipment; studies and surveys; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost was \$133 million. Major Defense Equipment (MDE) constituted \$110 million of this total.

This transmittal notifies the inclusion of the following additional MDE items: fifty-five (55) AIM-120C-8 Advanced Medium Range Air-to-Air Missiles (AMRAAM) and two (2) AIM-120C-8 AMRAAM guidance sections. Also included are non-MDE missile component parts and support equipment and other related elements of logistics and program support. The estimated total value of the new items and services is \$158 million. The estimated non-MDE value will increase by \$13 million to a revised \$36 million. The estimated total case value will increase by \$158 million to a revised \$291 million. MDE constitutes \$255 million of this total.

(iv) *Significance:* The proposed sale will meet Singapore's need to maintain operational readiness and interoperability with U.S. and coalition forces. This sale increases Singapore's effectiveness in both training and combat operations and contributes to stability and deterrence in the Indo-Pacific region.

(v) *Justification:* This proposed sale will support the foreign policy and national security objectives of the United States by improving the security of a strategic partner that is an important force for political stability and economic progress in Asia.

(vi) *Sensitivity of Technology:*

The Sensitivity of Technology statement contained in the original notification applies to the additional items reported here. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

(vii) *Date Report Delivered to Congress:* November 20, 2025

[FR Doc. 2026-02396 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 25-110]

Arms Sales Notification**AGENCY:** Defense Security Cooperation Agency, Department of Defense (DoD).**ACTION:** Arms sales notice.**SUMMARY:** The DoD is publishing the unclassified text of an arms sales notification.**FOR FURTHER INFORMATION CONTACT:**Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.**SUPPLEMENTARY INFORMATION:** This 36(b) arms sales notification is published to fulfill the requirements of section 155 of

Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-110, Policy Justification, and Sensitivity of Technology.

Dated: February 4, 2026.

Stephanie J. Bost,*Alternate OSD Federal Register Liaison Officer, Department of Defense.***BILLING CODE 6001-FR-P**

DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

November 19, 2025

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-110, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of India for defense services estimated to cost \$45.7 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael P. Miller
Michael P. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 25-110

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of India(ii) *Total Estimated Value:*

Major Defense Equipment *	\$37.1 million
Other	\$ 8.6 million
TOTAL	\$45.7 million

Funding Source: National Funds
(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE):

One hundred (100) Javelin FGM-148 rounds

One (1) Javelin FGM-148 missile, fly-to-buy

Twenty-five (25) Javelin Light-Weight Command Launch Units (LwCLU) or Javelin Block 1 Command Launch Units (CLU)

Non-Major Defense Equipment:

The following non-MDE items will also be included: Javelin LwCLU or CLU Basic Skills Trainers; missile simulation rounds; battery coolant unit; interactive electronic technical manual; Javelin operator manuals; lifecycle support; physical security inspection; spare parts; system integration and check out; Security Assistance Management Directorate (SAMD) technical assistance; Tactical Aviation and Ground Munitions (TAGM) Project Office technical assistance; tool kits; training; Block 1 CLU refurbishment services; and other related elements of logistics and program support.

(iv) *Military Department: Army (IN-B-UNB)*

(v) *Prior Related Cases, if any: None*

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None known at this time*

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Attached Annex*

(viii) *Date Report Delivered to Congress: November 19, 2025*

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India—Javelin Missile System

The Government of India has requested to buy one hundred (100) FGM-148 Javelin rounds; one (1) Javelin FGM-148 missile, fly-to-buy; and twenty-five (25) Javelin Lightweight Command Launch Units (LwCLU) or Javelin Block 1 Command Launch Units (CLU). The following non-major defense equipment items will also be included: Javelin LwCLU or CLU Basic Skills Trainers; missile simulation rounds; battery coolant unit; interactive electronic technical manual; Javelin operator manuals; lifecycle support; physical security inspection; spare parts; system integration and check out; Security Assistance Management Directorate (SAMD) technical assistance; Tactical Aviation and Ground Munitions (TAGM) Project Office technical assistance; tool kits; training; Block 1 CLU refurbishment services; and other related elements of logistics and program support. The estimated total cost is \$45.7 million.

This proposed sale will support the foreign policy and national security objectives of the United States (U.S.) by helping to strengthen the U.S.-Indian strategic relationship and to improve the security of a major defense partner which continues to be an important force for political stability, peace, and

economic progress in the Indo-Pacific and South Asia regions.

The proposed sale will improve India's capability to meet current and future threats, strengthen its homeland defense and deter regional threats. India will have no difficulty absorbing these articles and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be a RTX Corporation/Lockheed Martin Javelin Joint Venture (JJV) of Orlando, Florida and Tucson, Arizona. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to India.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 25-110

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The Javelin Weapon System is a medium-range, man portable, shoulder-launched, fire and forget, anti-tank system for infantry, scouts, and combat engineers. It may also be mounted on a variety of platforms including vehicles, aircraft, and watercraft. The system weighs 43.5 pounds and has a maximum range in excess of 4,500 meters. The system is highly lethal against tanks and other systems with conventional and reactive armors. The system possesses a secondary capability against bunkers.

2. Javelin's key technical feature is the use of fire-and-forget technology, which allows the gunner to fire and immediately relocate or take cover. Additional special features are the top attack and direct fire modes, an advanced tandem warhead and imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. The Javelin missile also has a minimum smoke motor thus decreasing the likelihood of its detection on the battlefield.

3. The Javelin Weapon System is comprised of two major tactical components, which are a reusable Light-

weight Command Launch Unit (LwCLU) or Command Launch Unit (CLU) and a round contained in a disposable launch tube assembly. The LwCLU or CLU incorporates an integrated day-night sight that provides a target engagement capability in adverse weather and countermeasure environments. The LwCLU or CLU may also be used in a stand-alone mode for battlefield surveillance and target detection. The LwCLU's or CLU's thermal sight is a third generation forward looking infrared sensor. To facilitate initial loading and subsequent updating of software, all on-board missile software is uploaded via the LwCLU or CLU after mating and prior to launch.

4. The Block 1 CLU is the standard variant, offering proven reliability and compatibility with the Javelin missile system. Though the Block 1 CLU is slightly heavier and bulkier than the LwCLU, it is suitable for dismounted operations.

5. The sensitivity is primarily in the software programs which instruct the system how to operate in the presence of countermeasures. The overall hardware is also considered sensitive in that the infrared wavelengths could be useful in attempted countermeasure development.

6. If LwCLUs are unavailable, the U.S. Government will provide Block 1 CLUs.

7. The missile is autonomously guided to the target using an imaging infrared seeker and adaptive correlation tracking algorithms. This allows the gunner to take cover or reload and engage another target after firing a missile. The missile has an advanced tandem warhead and can be used in either the top attack or direct fire modes (for targets undercover). An onboard flight computer guides the missile to the selected target.

8. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

10. A determination has been made that India can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

11. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of India.

[FR Doc. 2026-02394 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 25-77]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of

Representatives with attached Transmittal 25-77 and Policy Justification.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

DEC 01 2025

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-77, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost \$500 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-77

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$500 million
TOTAL	\$500 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-Major Defense Equipment:

The following non-MDE items will be included: A Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order (FMSO) II case to requisition orders for centrally managed spares and repair parts. This case supports the Royal Saudi Land Forces Aviation Corps' UH-60A/L/M Black Hawk utility helicopters; AH-64A/D/E Apache attack helicopters; CH-47F Chinook cargo helicopters; Schweizer 333 helicopters; and Aerial Scout helicopters; and other related elements of logistics and program support.

(iv) *Military Department:* Army (SR-B-KYQ)

(v) *Prior Related Cases, if any:* SR-B-KUW, SR-B-KVG, SR-B-KYO, SR-B-KRH, SR-B-KRL, SR-B-KRU, SR-B-KRX, SR-B-KRY

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* December 1, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—Cooperative Logistics Supply Support Arrangement Program, Foreign Military Sales Order II Case

The Kingdom of Saudi Arabia has requested to buy a Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order (FMSO) II case to requisition orders for centrally managed spares and repair parts. This case supports the Royal Saudi Land Forces Aviation Corps' UH-60A/L/M Black Hawk utility helicopters; AH-64A/D/E Apache attack helicopters; CH-47F Chinook cargo helicopters; Schweizer 333 helicopters; and Aerial Scout helicopters; and other related elements of logistics and program support. The estimated total cost is \$500 million.

This proposed sale will support the foreign policy and national security objectives of the United States (U.S.) by improving the security of a partner country that contributes to political stability and economic progress in the Gulf region.

The proposed sale will enhance Saudi Arabia's ability to effectively maintain and operate their U.S.-procured helicopter fleet. This will allow better integration with U.S.-led coalitions and operate independently in support of U.S. interests and the security of U.S. forces in theater and is consistent with U.S. bilateral and multilateral defense plans in the Central Command region. Saudi Arabia will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the military balance in the region.

There are no principal contractors involved with this potential sale. At this time, the U.S. government is not aware of any offset agreement proposed in

connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of any additional U.S. government or contractor representatives to the Kingdom of Saudi Arabia.

There will be no adverse impact on defense readiness as a result of this proposed sale.

[FR Doc. 2026-02402 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 25-84]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Urooj Zahra at (703) 695-6233, urooj.zahra.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 25-84 and Policy Justification.

Dated: February 4, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR?-P



DEFENSE SECURITY COOPERATION AGENCY
2800 Defense Pentagon
Washington, DC 20301-2800

The Honorable Mike Johnson
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

DEC 01 2025

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 25-84, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost \$445 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

Michael F. Miller
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 6001-FR-C

Transmittal No. 25-84

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Bahrain

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0
Other	\$ 445 million
TOTAL	\$ 445 million

Funding Source: National Funds

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Foreign Military Sales case BA-D-QDH was below congressional notification threshold at \$47 million (\$0 in major defense equipment) for F-16 aircraft sustainment. The Government of Bahrain has requested that the case be

amended to include additional support which will cause the case to exceed the notification threshold, and thus notification of the entire program is required. The notification requirements are combined as follows:

Major Defense Equipment (MDE):

None

Non-Major Defense Equipment:

Major and minor modifications; Computer Program Identification Numbers (CPINs); aircraft maintenance support equipment; launcher spare parts and support equipment; spare parts, consumables and accessories, and repair and return support; aircraft components; missile containers; radar warning receiver component parts; guidance and control section spares; weapons system support; ground handling equipment; instruments and lab equipment;

classified and unclassified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; transportation support; United States (U.S.) Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (BA-D-QDH)

(v) *Prior Related Cases, if any:* BA-D-SAB

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* December 1, 2025

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—F-16 Sustainment

The Government of Bahrain has requested to buy aircraft components; missile containers; radar receiver component parts; guidance and control section spares; weapons system support; ground handling equipment; and instruments and lab equipment that will be added to a previously implemented case whose value was under the congressional notification threshold. The original Foreign Military Sales case, valued at \$47 million (\$0 in major defense equipment), included major and minor modifications; Computer Program Identification Numbers (CPINs); aircraft maintenance support equipment; launcher spare parts and support equipment; spare parts, consumables and accessories, and repair and return support; classified and unclassified software delivery and support; classified and unclassified publications and technical documentation; studies and surveys; transportation support; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistics and program support. The estimated total cost is \$445 million.

This proposed sale will support the foreign policy and national security of the U.S. by helping to improve the security of a major non-NATO ally that is an important force for political stability and economic progress in the Middle East.

The proposed sale will improve Bahrain's capability to meet current and future threats by providing a credible force that can deter adversaries and provide the capability to participate in regional operations with the U.S. and other U.S. partner nations. Bahrain will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be General Electric Aerospace, located in Evendale, OH; and Lockheed Martin Aeronautics, located in Fort Worth, TX. At this time, the U.S. Government is not aware of any offset agreement proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the purchaser and the contractor.

Implementation of this proposed sale will not require the assignment of additional U.S. Government and U.S. contractor representatives to Bahrain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2026-02400 Filed 2-5-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17-259-009.
Applicants: Darby Power, LLC.
Description: Compliance filing; Compliance to 130 to be effective N/A.
Filed Date: 1/30/26.

Accession Number: 20260130-5333.
Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER17-262-009.
Applicants: Waterford Power, LLC.
Description: Compliance filing; Compliance to 133 to be effective N/A.
Filed Date: 1/30/26.

Accession Number: 20260130-5324.
Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER18-2497-015.
Applicants: Lawrenceburg Power, LLC.

Description: Compliance filing; Compliance to 149 to be effective N/A.
Filed Date: 1/30/26.

Accession Number: 20260130-5327.
Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER21-2368-003.
Applicants: Chalk Point Power, LLC.
Description: Refund Report: Refund Report.

Filed Date: 1/30/26.
Accession Number: 20260130-5227.
Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER22-2569-003.
Applicants: Dickerson Power, LLC.
Description: Refund Report: Refund Report.

Filed Date: 1/30/26.
Accession Number: 20260130-5229.
Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1196-000.
Applicants: Petersburg Energy Center, LLC.

Description: 205(d) Rate Filing; Revision to Market Based Rate to be effective 4/1/2026.

Filed Date: 1/30/26.
Accession Number: 20260130-5207.
Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1197-000.
Applicants: Public Service Company of Oklahoma.

Description: 205(d) Rate Filing; Proposed Revisions to West Operating Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5210.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1198-000.

Applicants: New England Power Pool Participants Committee.

Description: 205(d) Rate Filing; Feb 2025 Membership Filing to be effective 1/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5255.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1199-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment; Notice of Cancellation of CSA, Service Agreement No. 5369; Queue No. AC1-173 to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5263.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1200-000.

Applicants: Armenia Mountain Wind, LLC.

Description: 205(d) Rate Filing; Revisions to Market-Based Rate Tariffs Expedited Armenia Mt. Wind LLC, et al. to be effective 1/31/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5284.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1201-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing; Tariff Revisions Reg. Rate Sheet for Point-to-Point Transmission Service Rates to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5286.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1202-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment; Notice of Cancellation of CSA, Service Agreement No. 6355; Queue No. AD1-130 to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5289.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1203-000.

Applicants: Condon Wind Power, LLC.

Description: 205(d) Rate Filing; Revisions to Market-Based Rate Tariffs Expedited—Condon Wind Pwr LLC, et al. to be effective 1/31/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5292.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1204-000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing; Western Area Power Administration-

CRSP Contract Services Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5299.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1205–000.

Applicants: South Peak Wind LLC.

Description: 205(d) Rate Filing:

Revisions to Market-Based Rate Tariffs—Expedited—South Peak Wind, et al. to be effective 1/31/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5305.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1206–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: 205(d) Rate Filing: 103 WDS Filing for RY 1 to be effective 4/1/2012.

Filed Date: 1/30/26.

Accession Number: 20260130–5307.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1207–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Western Area Power Administration—RMR Contract Services Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5308.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1208–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: Tri-State Generation and Transmission Association Contract Services Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5310.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1209–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Revisions to Rate Schedule No. 281 to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5313.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1210–000.

Applicants: Consolidated Edison Company of New York, Inc.

Description: 205(d) Rate Filing: PASNY Tariff update to be effective 5/11/2012.

Filed Date: 1/30/26.

Accession Number: 20260130–5340.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1211–000.

Applicants: Florida Power & Light Company.

Description: 205(d) Rate Filing: Rollover NITSA No. 363 with FMPA to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5344.

Comment Date: 5 p.m. ET 2/20/26.

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, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02413 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL26–34–000]

DCR Transmission, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On January 30, 2026, the Commission issued an order in Docket No. EL26–34–000 pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether DCR Transmission, L.L.C.'s proposed Transmission Owner Tariff and annual Base Transmission Revenue Requirement are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *DCR Transmission, L.L.C.*, 194 FERC ¶ 61,085 (2026).

The refund effective date in Docket No. EL26–34–000 established pursuant to sections 206(b) and 309 of the FPA, will be June 12, 2024.

Any interested person desiring to be heard in Docket No. EL26–34–000 must

file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2025), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02424 Filed 2–5–26; 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 and Accounting Request filings:

Filings Instituting Proceedings

Docket Numbers: AC26–23–000.
Applicants: Entergy Louisiana, LLC.
Description: Entergy Louisiana, LLC submits proposed post-transaction accounting entries to clear Account 102 re sale of its gas distribution business to Delta Capital Gas Company, LLC.

Filed Date: 1/30/26.

Accession Number: 20260130–5418.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: PR26–33–000.

Applicants: Public Service Company of Colorado.

Description: 284.123(g) Rate Filing: Statement of Rates_01–01–2026 to be effective 1/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5444.

Comment Date: 5 p.m. ET 2/20/26.

284.123(g) Protest: 5 p.m. ET 3/31/26.

Docket Numbers: PR26–34–000.

Applicants: NorthWestern Corporation.

Description: 284.123 Rate Filing: Revised Transportation and Storage Rates (Annual Tax Tracker) to be effective 1/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5000.

Comment Date: 5 p.m. ET 2/23/26

Docket Numbers: RP26–441–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: 4(d) Rate Filing: Rate Schedule FDLS Rockaway Lateral Surcharge to be effective 3/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5209.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–442–000.

Applicants: ANR Pipeline Company.

Description: 4(d) Rate Filing: Neg Rate Agmts—Twin Eagle & Constellation Eff 2.1.26 to be effective 2/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5232.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–443–000.

Applicants: Northern Natural Gas Company.

Description: 4(d) Rate Filing: 20260130 Annual PRA to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5252.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–444–000.

Applicants: Northern Natural Gas Company.

Description: 4(d) Rate Filing: 20260130 Negotiated Rate Filing to be effective 2/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5264.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–445–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: 4(d) Rate Filing: Annual Modernization Capital Cost Recovery Mechanism—Eff. March 1, 2026 to be effective 3/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5269.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–446–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreements Update (Pioneer Feb-Mar 2026) to be effective 2/2/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5295.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–447–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 4(d) Rate Filing: 1.30.26 Negotiated Rates—Mercuria Energy America, LLC H–7540–89 to be effective 1/30/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5297.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–448–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 4(d) Rate Filing: 1.30.26 Negotiated Rates—Freepoint Commodities LLC H–7250–89 to be effective 1/30/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5300.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–449–000.

Applicants: Ruby Pipeline, L.L.C.

Description: 4(d) Rate Filing: RP 2026–01–30 FL&U and EPC Rate Adjustment to be effective 3/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5312.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–450–000.

Applicants: Viking Gas Transmission Company.

Description: 4(d) Rate Filing: Negotiated Rate PAL—Sequent Energy Management RLN–5009 to be effective 1/29/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5345.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–451–000.

Applicants: Northwest Pipeline LLC.

Description: 4(d) Rate Filing: Non Conforming Service Agreement—DRW Energy to be effective 3/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5392.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–452–000.

Applicants: North Baja Pipeline, LLC.
Description: 4(d) Rate Filing: Saavi Energy Solutions Capacity Release, Eff. 2/1/26 to be effective 2/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5445.

Comment Date: 5 p.m. ET 2/11/26.

Docket Numbers: RP26–453–000.

Applicants: Equitrans, L.P.

Description: 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—2/1/2026 to be effective 2/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5072.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–454–000.

Applicants: NEXUS Gas Transmission, LLC.

Description: 4(d) Rate Filing: Negotiated Rates—Various Releases eff 2–1–26 to be effective 2/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5075.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–455–000.

Applicants: Mountain Valley Pipeline, LLC.

Description: 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—2/1/2026 to be effective 2/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5078.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–456–000.

Applicants: Rover Pipeline LLC.

Description: 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 2–2–2026 to be effective 2/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5103.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–457–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: 4(d) Rate Filing: Negotiated Rates—Various Releases eff 2–1–26 to be effective 2/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5113.

Comment Date: 5 p.m. ET 2/17/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206

of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Dated: February 2, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02359 Filed 2-5-26; 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: ER10-2437-025.
Applicants: Arizona Public Service Company.

Description: Notice of Change in Status of Arizona Public Service Company.

Filed Date: 1/29/26.

Accession Number: 20260129-5556.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER11-3959-014.

Applicants: Post Rock Wind Power Project, LLC.

Description: Compliance filing: Post Rock Notice CIS to be effective 1/31/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5121.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER15-2589-006.

Applicants: CPV Shore, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 2/3/26.

Accession Number: 20260203-5103.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER23-2426-003.

Applicants: Pattern Energy Management Services LLC.

Description: Compliance filing: Pattern Notice Change in Status to be effective N/A.

Filed Date: 2/2/26.

Accession Number: 20260202-5210.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER23-2426-004.

Applicants: Pattern Energy Management Services LLC.

Description: Compliance filing: Pattern CIS to be effective 1/31/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5119.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER23-2639-003.

Applicants: NRG Business Marketing LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 2/3/26.

Accession Number: 20260203-5105.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-648-000.

Applicants: Atlas Solar VI, LLC.

Description: Report Filing: Atlas Solar V and VI Response to Deficiency Letter to be effective N/A.

Filed Date: 2/2/26.

Accession Number: 20260202-5002.

Comment Date: 5 p.m. ET 2/12/26.

Docket Numbers: ER26-649-000.

Applicants: Atlas Solar V, LLC.

Description: Report Filing: Atlas Solar V and VI Response to Deficiency Letter to be effective N/A.

Filed Date: 2/2/26.

Accession Number: 20260202-5001.

Comment Date: 5 p.m. ET 2/12/26.

Docket Numbers: ER26-801-001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of NSA, SA No. 7775; AF1-147/AG1-221 in ER26-801-000 to be effective 11/17/2025.

Filed Date: 2/3/26.

Accession Number: 20260203-5124.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1245-000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-CEPCI—SA No. 737 LARGE LOAD STABILITY AND POWER QUALITY STUDY AGREEMENT to be effective 4/4/2026.

Filed Date: 2/2/26.

Accession Number: 20260202-5199.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER26-1246-000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2026-02-02 Yampa Valley—NITSA & NOA—752, 897 to be effective 4/4/2026.

Filed Date: 2/2/26.

Accession Number: 20260202-5204.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER26-1247-000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: eTariff Reconciliation Filing to be effective 7/14/2025.

Filed Date: 2/3/26.

Accession Number: 20260203-5000.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1248-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6248; Queue No. AE2-206 to be effective 4/5/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5027.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1249-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6007; Queue No. AD2-115 to be effective 4/5/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5035.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1250-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, Service Agreement No. 7811; Project Identifier No. AG1-105 to be effective 1/5/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5042.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1251-000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Network Service Agreement SA No. 152 to be effective 4/1/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5107.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1252-000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Network Operating Agreement SA No 153 to be effective 4/1/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5109.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1253-000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing: Network Operating Agreement SA No 154 to be effective 4/1/2026.

Filed Date: 2/3/26.

Accession Number: 20260203-5113.

Comment Date: 5 p.m. ET 2/24/26.

Docket Numbers: ER26-1254-000.

Applicants: Black Hills Power, Inc.

Description: § 205(d) Rate Filing; Network Operating Agreement SA No 156 to be effective 4/1/2026.

Filed Date: 2/3/26.

Accession Number: 20260203–5133.

Comment Date: 5 p.m. ET 2/24/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: February 3, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02327 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15249–002]

Lewis Ridge Pumped Storage, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 15249–002.

c. *Date Filed:* June 13, 2025.

d. *Applicant:* Lewis Ridge Pumped Storage, LLC (Lewis Ridge LLC).

e. *Name of Project:* Lewis Ridge Pumped Storage Project (Lewis Ridge Project).

f. *Location:* The Lewis Ridge Project is located near the towns of Blackmont, Tejay, Balkan, and Callaway, in Bell County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Sandy Slayton, Rye Development, 1455 SW Broadway Street, Suite 290, Portland, Oregon 97201; (503) 341–1425; email: sandy@ryedevelopment.com.

i. *FERC Contact:* Sarah Salazar at (202) 502–6863, or email at sarah.salazar@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* on or before 5:00 p.m. Eastern Time on April 3, 2026; reply comments are due on or before 5:00 p.m. Eastern Time on May 18, 2026.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCOOnline.aspx>. Commenters can submit brief comments up to 10,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support at FERCOOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Lewis Ridge Pumped Storage Project (P–15249–002).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. *Project Description:* The proposed project boundary would enclose about 148 acres of privately owned land,

primarily owned by Asher Land and Mineral, LLLP, on which it used previously for surface and underground coal mining. About 16 additional parcels of privately owned property would be included in the project boundary, primarily along the transmission line and water intake conduit extending from the Cumberland River to the lower reservoir. These lands are identified in Exhibit G of the license application (Project Boundary Drawing).

The proposed Lewis Ridge Project would consist of a 48.2-acre upper reservoir created by an 8,241-foot-long, 50-foot-high rocky earth-fill dam with an integrated emergency overflow spillway passing flows to the Pound Mill Branch and into Puckett Creek. The upper reservoir would have an active storage of about 2,602 acre-feet between normal maximum elevation 2,150 feet and normal minimum elevation 2,076 feet.¹ An intake in the upper reservoir would pass flows to a 3,134-foot-long, 16-foot-diameter above-ground penstock. The penstock would connect to a powerhouse located 267 feet below ground, containing two 154-megawatt (MW) reversible pump-turbines with a total rated capacity of 308 MW. Flows from the powerhouse would pass through two 249-foot-long, 12-foot-diameter draft tubes to a 110-foot-long water intake located at the lower reservoir. The 51.6-acre lower reservoir would be created by a 1,120-foot-long, 138-foot-high earth-fill dam and have an integrated emergency overflow spillway passing flows to the Cumberland River. The lower reservoir would have a gross storage of 3,486 acre-feet and active storage of about 2,602 acre-feet, between a normal maximum elevation 1,134 feet and normal minimum elevation 1,034 feet.

A permanent intake would be located on the Cumberland River to provide initial fill flows and maintenance flows. The intake would consist of 6 screened inlets which connect to a removable/mobile pumping station. Flows from the pumping station would pass through three parallel 4,724-foot-long, 24-inch-diameter buried pipelines which would direct flows to a stilling basin at the lower reservoir.

Lewis Ridge LLC would develop about 7.1 miles of permanent roads for project access and maintenance, and 4 miles of temporary roads for construction. Lewis Ridge LLC would use two disposal sites to deposit excess spoil material (excavated soil and rocks). After construction is completed,

¹ Elevations are based on the North American Vertical Datum of 1988 (NAVD 88).

these sites would be seeded and revegetated.

The project would include a 2.5-mile-long, 161-kilovolt overhead transmission line and two switching stations, connecting the project powerhouse to the grid at the existing Pineville-Harlan #1 transmission line. Under normal operation, the project would have the capacity to produce about 717,000 megawatt hours (MWh) of peak energy annually.

The Lewis Ridge Pumped Storage Project would use flows from the Cumberland River and Tom Fork River for the initial fill and periodic recharge of the reservoirs. The project would require about 2,808 acre-feet of water for the initial fill and 149 acre-feet annually to replace water that would be lost to evaporation and seepage. All flows in the Tom Fork River above 2.8 cubic feet per second (cfs) would be available for initial fill and maintenance flows. About 10% of the mean monthly flow in the Cumberland River would be used for initial fill and to supplement Tom Fork River flows for maintenance when needed.

The lower reservoir would inundate part of the 1.8-mile-long Tom Fork River. The lower reservoir dam would include a low-level outlet, which would be used for emergency releases, as well as providing approximately 2.8 cfs (the estimated mean annual flow) to the lower section of the Tom Fork River.

The proposed project would pump water from the lower reservoir to the upper reservoir during periods of low electrical demand (*i.e.*, off-peak energy) and generate energy by passing the water from the upper to the lower reservoir through the generating units during periods of high electrical demand (*i.e.*, peak energy). Water surface elevations in the upper reservoir would fluctuate about 74 feet under normal operation. The water surface elevation in the lower reservoir would fluctuate 100 feet. The project would produce 266 MW of energy for an 8-hour generation cycle and take 8.8 hours to return water from the lower reservoir to the upper reservoir. The return cycle would require 340 MW of power.

Under an original license, in addition to constructing, operating, and maintaining the project as described above, Lewis Ridge LLC would implement the following measures: (1) additional geo-technical analyses; (2) an Erosion and Sediment Control Plan; (3) a Water Quality Monitoring Plan; (4) a Stormwater Pollution Prevention Plan; (5) a Hazardous Substances Spill Prevention and Cleanup Plan; (6) a Groundwater Protection Plan; (7) fish exclusion measures; (8) a mussel

relocation program; (9) a Wildlife Management Plan; (10) a Vegetation Management Plan; and (11) a Historic Properties Management Plan.

m. A copy of the application is available for review 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-15249). For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicants. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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.

You may also register online at <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.

n. The license applicant must file the following on or before 5:00 p.m. Eastern Time April 3, 2026: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. Final amendments to the application must be filed with the Commission on or before 5:00 p.m. Eastern Time on March 4, 2026.

(Authority: 18 CFR 2.1)

Dated: February 2, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02358 Filed 2-5-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER26-1180-000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii): 2026-01-30_SA 4668 Ameren Illinois-City of Farmer-IMEA WCA to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5089.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1181-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 434 to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5111.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1182-000.

Applicants: Old Gold Energy Center, LLC.

Description: 205(d) Rate Filing: Top of Iowa Wind LLC Notice of Succession to be effective 1/31/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5138.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1183-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Revisions to OATT, Attachment M, Formulaic Rates and Implementation Protocols to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5152.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1184-000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: 205(d) Rate Filing: American Transmission Company LLC submits tariff filing per 35.13(a)(2)(iii): 2026-01-30_ATC Request for Incentives to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130-5155.

Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1185–000.
Applicants: Southern California Edison Company.
Description: 205(d) Rate Filing: 2nd Amended IFA, CDWR (SA 419) & Greenspot IFA, SBVMWD & SGPWA (SA 1406) to be effective 2/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5160.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1186–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 205(d) Rate Filing: 2026–01–30_Schedule 31 Annual Update Filing to be effective 4/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5174.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1187–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): City of Troy NITSA and NOA 2026 Rollover Filing to be effective 1/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5176.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1188–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): City of Robertsdale NITSA 2026 Rollover Filing to be effective 1/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5177.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1189–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): PowerSouth Amended and Restated Long-Term Firm PTP Agreement Filing to be effective 1/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5181.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1190–000.
Applicants: Caprock Wind LLC.
Description: Compliance filing: Notice of Change in Status, Category Seller Status Change & Revised MBR Tariff to be effective 1/31/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5184.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1191–000.

Applicants: San Diego Gas & Electric.
Description: 205(d) Rate Filing: Service Agreement No. 72 to be effective 9/15/2025.
Filed Date: 1/30/26.
Accession Number: 20260130–5189.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1192–000.
Applicants: LRE Energy Services, LLC.
Description: Compliance filing: Notice of Change in Status, Category Seller Status Change & Revised MBR Tariff to be effective 1/31/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5186.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1193–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 3125R20 Basin Electric Power Cooperative NITSA and NOA to be effective 4/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5190.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1194–000.
Applicants: Twelvemile Solar Energy, LLC.
Description: Compliance filing: Notice of Change in Status, Category Seller Status Change & Revised MBR Tariff to be effective 1/31/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5191.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: ER26–1195–000.
Applicants: 64NB 8me LLC.
Description: Compliance filing: Notice of Non-Material Change in Status and Revised Market-Based Rate Tariff to be effective 1/31/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5197.
Comment Date: 5 p.m. ET 2/20/26.
Take notice that the Commission received the following foreign utility company status filings:
Docket Numbers: FC26–8–000.
Applicants: Hexa Taiwan Companies.
Description: Hexa Taiwan Companies submit Notice of Self-Certification of Foreign Utility Company Status under FC26–8.
Filed Date: 1/30/26.
Accession Number: 20260130–5077.
Comment Date: 5 p.m. ET 2/20/26.
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, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02411 Filed 2–5–26; 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: PR26–35–000.
Applicants: Black Hills/Kansas Gas Utility Company, LLC.
Description: § 284.123 Rate Filing: BHKG Revised SOC and Statement of Rates to be effective 1/1/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5064.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: RP26–458–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Osaka 46428 to Sequent 60239) to be effective 2/1/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5200.
Comment Date: 5 p.m. ET 2/17/26.
Docket Numbers: RP26–459–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: RP 2026–02–02 Non-Conforming Agreement Amendment to be effective 2/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5201.
Comment Date: 5 p.m. ET 2/17/26.
Docket Numbers: RP26–460–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Entergy LA 48769 to ARM 60212) to be effective 2/1/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5206.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–461–000.

Applicants: ExxonMobil Oil Corporation, Pioneer Natural Resources USA, Inc.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of ExxonMobil Oil Corporation, et al.

Filed Date: 2/2/26.

Accession Number: 20260202–5223.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–462–000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: § 4(d) Rate Filing: Negotiated Rate Agreements Castleton 22956 & 22983, Eff 3.1.26 to be effective 3/1/2026.

Filed Date: 2/3/26.

Accession Number: 20260203–5029.

Comment Date: 5 p.m. ET 2/17/26.

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.

Filings in Existing Proceedings

Docket Numbers: PR25–52–003.

Applicants: Consumers Energy Company.

Description: Compliance Filing and Updated Statement of Operating Conditions to be effective 6/1/2025.

Filed Date: 2/2/26.

Accession Number: 20260202–5175.

Comment Date: 5 p.m. ET 2/23/26.

§ 284.123(g) Protest: 5 p.m. ET 4/03/26.

Docket Numbers: RP26–441–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Report Filing: Supplement to Rate Schedule FDLS-Rockaway Lateral Surcharge to be effective N/A.

Filed Date: 2/2/26.

Accession Number: 20260202–5169.

Comment Date: 5 p.m. ET 2/17/26.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: February 3, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02328 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–20–000]

Columbia Gas Transmission, LLC; Notice of Cancellation of Public Scoping Session for the Southeast Virginia Energy Storage Project

On January 13, 2026, the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Southeast Virginia Energy Storage Project and Notice of Public Scoping Sessions*. The notice solicited comments on the potential environmental impacts of the planned project and announced the time and location of two public scoping sessions being held for the environmental proceedings.

Due to the upcoming winter storm, the Commission staff is cancelling the scoping sessions planned for February 3, 2026 at the Jessica Ann Moore Community Center, 408 School Street, Waverly, VA. If a new session is established and scheduled, the Commission will issue another notice advising the date and time.

(Authority: 18 CFR 2.1)

Dated: January 30, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–02425 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1904–078; 1855–050; 1892–030]

Great River Hydro, LLC; Notice of Availability of the Final Environmental Impact Statement for the Vernon, Bellows Falls, and Wilder Hydroelectric Projects

In accordance with the National Environmental Policy Act of 1969¹ and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the applications for relicense for the Vernon Hydroelectric Project (Vernon Project) (FERC No. 1904), Bellows Falls Hydroelectric Project (Bellows Falls Project) (FERC No. 1855), and Wilder Hydroelectric Project (Wilder Project) (FERC No. 1892) and has prepared a final environmental impact statement (EIS) for the projects. The projects are located on the Connecticut River in Windsor, Windham, and Orange counties, Vermont, and Sullivan, Cheshire, and Grafton counties, New Hampshire.

The final EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the Vernon, Bellows Falls, and Wilder projects. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Native-American tribes, the public, the license applicant, and Commission staff.

The Commission provides all interested persons with an opportunity to view and/or print the final EIS 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. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

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.

For public inquiries and assistance with making filings such as interventions, comments, or requests for

¹ National Environmental Policy Act of 1969, amended (Pub. L. 91–190, 42 U.S.C. 4321–4347, as amended by Pub. L. 94–52, July 3, 1975, Pub. L. 94–83, August 9, 1975, Pub. L. 97–258, 4(b), September 13, 1982, Pub. L. 118–5, June 3, 2023).

rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

For further information, contact Steve Kartalia at (202) 502-6131, or stephen.kartalia@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02422 Filed 2-5-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-514-000; Docket No.
CP25-517-000]

Tennessee Gas Pipeline Company, LLC; Southern Natural Gas Company, LLC; Elba Express Company, LLC; Notice of Availability of The Draft Environmental Impact Statement for the Proposed Mississippi Crossing Project and South System Expansion 4 Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Mississippi Crossing Project (MSX), proposed by Tennessee Gas Pipeline Company, LLC (TGP) and the South System Expansion 4 Project (SSE4), proposed by Southern Natural Gas Company, LLC (SNG) and Elba Express Company, LLC (EEC).¹ TGP requests authorization to construct and operate approximately 208 miles of natural gas pipeline and pipeline lateral facilities in Washington, Sunflower, Humphreys, Holmes, Attala, Leake, Neshoba, Newton, Lauderdale, and Clarke counties, Mississippi and Choctaw County, Alabama. MSX would also include three new compressor stations, modifications to one existing compressor station, four new meter stations, and other appurtenant facilities. SNG/EEC request authorization to construct and operate 22 natural gas pipeline loops totaling approximately 291 miles, modifications to add compression at 14 existing compressor stations on SNG's South Main Line and the Elba Express Pipeline, and three new meter stations and modifications to seven existing meter stations within Clarke and

Lauderdale counties, Mississippi; Sumter, Marengo, Perry, Dallas, Autauga, Elmore, Tallapoosa, Macon, Hale, and Lee counties, Alabama; and, Clayton, Muscogee, Harris, Talbot, Upson, Crawford, Monroe, Bibb, Jones, Baldwin, Glascock, Jefferson, Richmond, Spalding, Henry, Lowndes, Burke, Screven, Cobb, Chatham, and Effingham counties, Georgia.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00pm Eastern Time on March 23, 2026. Instructions for filing comments are provided on page 4.

FERC is the lead federal agency for authorizing interstate natural gas transmission facilities under the Natural Gas Act of 1938 (NGA) and the lead federal agency for preparation of the draft EIS. The draft EIS assesses the potential environmental effects of the construction and operation of MSX and SSE4 (collectively referred to as "the Projects") in accordance with the requirements of the National Environmental Policy Act (NEPA)² and the Commission's implementing regulations.³ The principal purposes of the draft EIS are to: identify and assess the potential effects on the natural and human environment; describe and evaluate reasonable alternatives; identify and recommend mitigation measures; and facilitate public involvement in the environmental review process. The EIS concludes that approval of the proposed Projects would have some limited adverse environmental effects; however, with implementation of TGP, SNG, and EEC's avoidance, minimization, and mitigation measures, as well as adherence to Commission staff's mitigation measures recommended in the EIS, these effects would be less than significant.

Three districts of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Park Service, the Alabama Department of Conservation and Natural Resources, and the Mississippi Department of Wildlife, Fisheries, and Parks participated as cooperating agencies in the preparation of the draft EIS. Cooperating agencies have jurisdiction

by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Army Corps of Engineers will adopt and use the EIS to consider the issuance of Section 404 of the Clean Water Act. Although the cooperating agencies provided input towards the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective records of decision (where applicable) for the Projects.

The draft EIS addresses the potential environmental effects of construction and operation in Mississippi and Alabama of the following MSX facilities:

- Approximately 177 miles of new 42-inch-diameter natural gas pipeline and 22 miles of 36-inch-diameter natural gas pipeline in Mississippi and Alabama;
- Five new lateral natural gas pipelines:
 - Seven-mile-long, 36-inch-diameter Columbia Gulf Transmission Lateral in Humphreys and Sunflower counties, Mississippi;
 - A 0.9-mile-long, 30-inch-diameter Texas Eastern Transmission, LP Lateral in Attala County, Mississippi;
 - A 0.7-mile-long, 30-inch-diameter Texas Gas Lateral in Attala County, Mississippi;
 - A 0.1-mile-long, 30-inch-diameter TGP 500 Lateral in Attala County, Mississippi;
 - A 0.5-mile-long, 36-inch-diameter Transcontinental Gas Pipe Line Company Lateral in Choctaw County, Alabama;
- Three new natural gas compressor stations:
 - Station 602—95,700 International Organization for Standardization (ISO) horsepower (hp) station in Humphreys County, Mississippi;
 - Station 606A—23,470 ISO hp station in Attala County, Mississippi;
 - Station 610—63,800 ISO hp station in Lauderdale County, Mississippi;
- Modifications at existing compressor station 54 located in Washington County, Mississippi;
- Four new meter stations;
- Three new overpressure protection facilities; and
- Appurtenant facilities such as mainline valves, cathodic protection, and pipeline inspection gauge trap facilities throughout the MSX area.

The draft EIS also addresses the potential environmental effects of construction and operation in Mississippi, Alabama, and Georgia of the following SSE4 facilities:

- 22 new gas pipeline loops, organized into 14 segments, totaling

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is FERC/EISX-019-20-000-1751972052.

² National Environmental Policy Act of 1969, as amended (Public Law [Pub. L.] 91-190, 42 U.S.C. 4321-4347, as amended by Pub. L. 94-52, July 3, 1975; Pub. L. 94-83, August 9, 1975; Pub. L. 97-258, 4(b), September 13, 1982; Pub. L. 118-5, June 3, 2023; Pub. L. 119-21, July 4, 2025).

³ 18 Code of Federal Regulations (CFR) 380.

approximately 291 miles and located mainly parallel to SNG’s existing South Main Line in Mississippi, Alabama, and Georgia;

- Modifications and/or horsepower expansions to increase compression at 14 existing stations located along SNG’s South Main Line and EEC’s Elba Express Pipeline; and
- Three new meter stations and modifications to seven existing meter stations along the South Main Line and Elba Express Pipeline.

In addition, SSE4 would include abandonment of approximately 4.4 miles of SNG’s existing 16-inch-diameter K Gen Lateral in Clarke County, Mississippi.

The Commission mailed a copy of the *Notice of Availability* of the draft EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC’s website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC’s website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>) select “General Search” and enter the docket number in the “Docket Number” field, excluding the last three digits (*i.e.* CP25–514 or CP25–517). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov

or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The draft EIS is not a decision document. It presents Commission staff’s independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Under section 7(c) of the NGA, the Commission determines whether interstate natural gas transportation facilities are in the public convenience and necessity and, if so, grants a Certificate of Public Convenience and Necessity to construct and operate them. Section 7(b) of the NGA specifies that no natural gas company shall abandon any portion of its facilities subject to the Commission’s jurisdiction without the Commission first finding that the abandonment will not negatively affect the present or future public convenience and necessity. The Commission bases its decisions on both economic issues, including need, and environmental effects.

Your comments should focus on draft EIS’s disclosure and discussion of potential environmental effects, measures to avoid or lessen environmental effects, and the completeness of the submitted alternatives, information and analyses. In addition, landowner comments are encouraged on the site-specific construction plans that TGP, SNG, and EEC developed for residences within 25 feet of construction work areas, provided in appendix G and H of the draft EIS. For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to

assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission’s website (www.ferc.gov) under the link to FERC Online. This 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 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.” If you are filing a comment on a particular project, please select “Comment on a Filing” as the filing type; 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 (CP25–514 or CP25–517) 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, Maryland 20852.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment sessions its staff will conduct in the project area to receive comments on the draft EIS, scheduled as follows:

Date and time	Location
February 23, 2026, 5:00 p.m. to 7:00 p.m. CST	American Legion Hut, 14051 Hwy. 15 South, Decatur, MS 39327.
February 24, 2026, 5:00 p.m. to 7:00 p.m. CST	The Warehouse Industrial Venue, 212 N Academy Ave., Butler, AL 36904.
February 25, 2026, 5:00 p.m. to 7:00 p.m. CST	Carl C. Morgan Convention Center, 211 Washington Street, Selma, AL 36701.
February 26, 2026, 5:00 p.m. to 7:00 p.m. CST	Tuskegee Municipal Complex, 101 Fonville Street, Tuskegee, AL 35083.
March 2, 2026, 5:00 p.m. to 7:00 p.m. CST	Wister Gardens, 1440 Hwy. 7 South, Belzoni, MS 39038.
March 3, 2026, 5:00 p.m. to 7:00 p.m. CST	Old Town Station, 410 Old Ethel Road, Kosciusko, MS 39090.
March 4, 2026, 5:00 p.m. to 7:00 p.m. CST	Copeland Center, 4501 4th St., Meridian, MS 39307.
March 5, 2026, 5:00 p.m. to 7:00 p.m. EST	Harris County Community Center, 7509 GA–116, Hamilton, GA 31811.
March 9, 2026, 5:00 p.m. to 7:00 p.m. EST	Adriana’s Event Venue, 2733 Sheraton Dr., Macon, GA 31204.
March 10, 2026, 5:00 p.m. to 7:00 p.m. EST	The Pringle Building, 114 East Haynes St., Sandersville, GA 31082.
March 11, 2026, 5:00 p.m. to 7:00 p.m. EST	Holiday Inn Express, 1361 N Expressway, Griffin, GA 30223.

¹Although the associated project for a specific meeting location may indicate “MSX” or “SSE4,” FERC Staff will be accepting comments on both projects regardless of venue.

The primary goal of these comment sessions is to have you identify the specific environmental issues and

concerns with the draft EIS. Individual oral comments will be taken on a one-on-one basis with a court reporter. This

format is designed to receive the maximum amount of comments, in a

convenient way during the timeframe allotted.

Each comment session is scheduled from 5:00 p.m. to 7:00 p.m. (local time zone where meeting is held). You may arrive at any time after 5:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 7:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 6:30 p.m. Please see appendix 1 for additional information on the session format and conduct.⁴

Your oral comments will be recorded by the court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see page 3 for instructions on using eLibrary). If a significant number of people are interested in providing oral comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a comment session.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. *Simply filing environmental comments will not give you intervenor status, but you do not need intervenor*

status to have your comments considered.

Questions?

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. Additional information about the project is available from the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

(Authority: 18 CFR 2.1)

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026-02427 Filed 2-5-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-527-000]

Nueva Era Dos, LLC; Notice of Availability of the Environmental Assessment for the Proposed Nueva Era Dos Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Nueva Era Dos Pipeline Project, proposed by Nueva Era Dos, LLC (Nueva Era Dos), in the above-referenced docket.¹ Nueva Era Dos requests authorization to construct and operate a natural gas transmission pipeline across the U.S.-Mexico border in Maverick County, Texas. Specifically, Nueva Era Dos proposes to install approximately 3,603 feet of 36-inch-diameter natural gas transmission pipeline via a

horizontal directional drill. According to Nueva Era Dos, the Project would provide about one billion standard cubic feet of natural gas per day to industrial customers in Mexico.

Any person wishing to comment on the EA may do so. To ensure consideration of your comments on the proposal prior to making a decision on the Project, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on March 2, 2026. Instructions for filing comments are provided on pages 2 and 3.

FERC is the lead federal agency for authorizing interstate natural gas transmission facilities under the Natural Gas Act of 1938 (NGA) and the lead federal agency for preparation of the EA. The EA assesses the potential environmental effects of the Nueva Era Dos Pipeline Project in accordance with the requirements of the National Environmental Policy Act (NEPA)² and the Commission's implementing regulations.³ The principal purposes of the EA are to: identify and assess the potential effects on the natural and human environment; describe and evaluate reasonable alternatives; identify and recommend mitigation measures; and facilitate public involvement in the environmental review process. The EA concludes that approval of the proposed project would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the *Notice of Availability* of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/elibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field, excluding

⁴ 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 assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX-019-20-000-1758098973.

² National Environmental Policy Act of 1969, as amended (Public Law [Pub. L.] 91-190, 42 U.S.C. 4321-4347, as amended by Pub. L. 94-52, July 3, 1975; Pub. L. 94-83, August 9, 1975; Pub. L. 97-258, 4(b), September 13, 1982; Pub. L. 118-5, June 3, 2023; Pub. L. 119-21, July 4, 2025).

³ 18 Code of Federal Regulations (CFR) 380.

the last three digits (*i.e.* CP25–527). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Under Section 3 of the NGA, the FERC considers as part of its decision to authorize natural gas facilities, all factors bearing on the public interest. Specifically, regarding whether to authorize natural gas facilities used for importation or exportation, the FERC shall authorize the proposal unless it finds that the proposed facilities will not be consistent with the public interest.

Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental effects. The more specific your comments, the more useful they will be. For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature 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 must select the type of filing you are making. If you are filing a comment on a particular project, please select "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 (CP25–527–000) 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, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

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. Additional information about the project is available from the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically

providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

(Authority: 18 CFR 2.1)

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02426 Filed 2–5–26; 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 exempt wholesale generator filings:

Docket Numbers: EG26–144–000.

Applicants: Atlas Solar II, LLC.

Description: Atlas Solar II, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/29/26.

Accession Number: 20260129–5416.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: EG26–145–000.

Applicants: 311SV 8me LLC.

Description: 311SV 8me LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/29/26.

Accession Number: 20260129–5432.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: EG26–146–000.

Applicants: Little Ashdown Solar, LLC.

Description: Little Ashdown Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/30/26.

Accession Number: 20260130–5110.

Comment Date: 5 p.m. ET 2/20/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1781–013; ER22–381–021; ER21–2715–010; ER25–1272–002; ER21–714–016; ER22–399–011; ER19–2626–015.

Applicants: Rosewater Wind Farm LLC, Meadow Lake Solar Park LLC, Indiana Crossroads Wind Farm LLC, Gibson Solar, LLC, Fairbanks Solar Energy Center LLC, Dunns Bridge Solar Center, LLC, Northern Indiana Public Service Company.

Description: Notice of Non-Material Change in Status of Northern Indiana Public Service Company, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5460.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: R25–1234–003.

Applicants: Algonquin Power Sanger LLC.

Description: Compliance filing: Clearlight Energy Sanger LLC submits tariff filing per 35: Compliance Filing to be effective 1/8/2025.

Filed Date: 1/29/26.

Accession Number: 20260129–5456.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER25–1235–003.

Applicants: Algonquin SKIC 10 Solar, LLC.

Description: Compliance filing: Clearlight Energy SKIC 10 Solar, LLC submits tariff filing per 35: Compliance Filing to be effective 1/8/2025.

Filed Date: 1/29/26.

Accession Number: 20260129–5461.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER25–1237–003.

Applicants: Algonquin SKIC 20 Solar, LLC.

Description: Compliance filing: Clearlight Energy SKIC 20 Solar, LLC submits tariff filing per 35: Compliance Filing to be effective 1/8/2025.

Filed Date: 1/29/26.

Accession Number: 20260129–5465.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER25–2818–001.

Applicants: Adelite Solar, LLC.

Description: Supplement to 11/18/2025, Notice of Non-Material Change in Status of Adelite Solar, LLC.

Filed Date: 1/27/26.

Accession Number: 20260127–5304.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: ER25–2819–001.

Applicants: Ruby Solar, LLC.

Description: Supplement to 11/18/2025, Notice of Non-Material Change in Status of Ruby Solar, LLC.

Filed Date: 1/27/26.

Accession Number: 20260127–5305.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: ER25–3475–003.

Applicants: Branch Solar, LLC.

Description: Compliance filing: Branch Solar Change in Status to be effective 1/30/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5450.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–1172–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Notice of Cancellation of Rate Schedule FERC No. 409, 410, and 411 to be effective 1/21/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5481.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–1173–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 205(d) Rate Filing: 2026–01–29 CONUX–SISA–781–0.0.0 to be effective 1/30/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5487.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–1174–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 205(d) Rate Filing: 2026–01–29 GRE–Nobles–SISA–782–0.0.0 to be effective 1/30/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5490.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–1175–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 205(d) Rate Filing: 2026–01–29 MPA–Chaska West Creek–778–0.0.0 to be effective 1/30/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5496.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–1176–000

Applicants: Pacific Gas and Electric Company.

Description: 205(d) Rate Filing: TO: Revisions—EDAM access charge to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5003.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1177–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4607 Pryor Quarry GIA to be effective 1/20/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5024.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1178–000.

Applicants: Ohio Power Company.

Description: 205(d) Rate Filing: AEPSC submits an update to Attachment 1 of the ILDSA—SA No. 1336 to be effective 1/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5025.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1179–000.

Applicants: Tampa Electric Company.

Description: 205(d) Rate Filing: Ministerial Filing (Administrative)—Order No. 881 to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5086.

Comment Date: 5 p.m. ET 2/20/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.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, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: January 30, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–02412 Filed 2–5–26; 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: PR26–29–000.

Applicants: Columbia Gas of Kentucky, Inc.

Description: 284.123 Rate Filing: Revised Statement of Operating Conditions 1–29–2026 to be effective 12/31/2025.

Filed Date: 1/29/26.

Accession Number: 20260129–5145.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: PR26–30–000.

Applicants: Columbia Gas of Pennsylvania, Inc.

Description: 284.123 Rate Filing: Revised Statement of Operating Conditions per PAPUC12–9–2025 Order to be effective 1/1/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5163.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: PR26–31–000.

Applicants: Wisconsin Power and Light Company.

Description: 284.123(g) Rate Filing: WPL Statement of Operating Conditions Update 2026 to be effective 2/1/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5186.

Comment Date: 5 p.m. ET 2/19/26.

284.123(g) Protest: 5 p.m. ET 3/30/26.

Docket Numbers: PR26–32–000.

Applicants: Southern California Gas Company.

Description: 284.123 Rate Filing: Offshore Delivery Service Rate Revision January 2026 to be effective 1/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5011.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: RP26–428–000.

Applicants: Discovery Gas Transmission LLC.

Description: 4(d) Rate Filing: Business Process and Gas Measurement Updates to be effective 3/1/2026.

Filed Date: 1/29/26.

Accession Number: 20260129–5393.

Comment Date: 5 p.m. ET 2/10/26.

Docket Numbers: RP26–429–000.

Applicants: Wyoming Interstate Company, L.L.C.
Description: 4(d) Rate Filing: Fuel_LU Quarterly Update Filing Eff March 2026 to be effective 3/1/2026.
Filed Date: 1/29/26.
Accession Number: 20260129–5395.
Comment Date: 5 p.m. ET 2/10/26.
Docket Numbers: RP26–430–000.
Applicants: Sabine Pipe Line LLC.
Description: 4(d) Rate Filing: Updates to Pro Forma Agreements to be effective 3/1/2026.
Filed Date: 1/29/26.
Accession Number: 20260129–5469.
Comment Date: 5 p.m. ET 2/10/26.
Docket Numbers: RP26–431–000.
Applicants: Alliance Pipeline L.P.
Description: 4(d) Rate Filing: PAL Negotiated Rate Agreement 2026–01–29 to be effective 1/29/2026.
Filed Date: 1/29/26.
Accession Number: 20260129–5484.
Comment Date: 5 p.m. ET 2/10/26.
Docket Numbers: RP26–432–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: 4(d) Rate Filing: Negotiated Rate Agreement Update (EOG Feb 25–Apr 2026) to be effective 2/1/2026.
Filed Date: 1/29/26.
Accession Number: 20260129–5493.
Comment Date: 5 p.m. ET 2/10/26.
Docket Numbers: RP26–433–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Feb–Apr 2026) to be effective 2/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5009.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–434–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 1.30.26 Negotiated Rates—Vitol Inc. R–7495–29 to be effective 2/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5072.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–435–000.
Applicants: Alliance Pipeline L.P.
Description: 4(d) Rate Filing: Negotiated Rates—Releases 2026–02–01 and Housekeeping to be effective 2/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5074.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–436–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 4(d) Rate Filing: 1.30.26 Negotiated Rates—Vitol Inc. R–7495–30 to be effective 2/1/2026.

Filed Date: 1/30/26.
Accession Number: 20260130–5081.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–437–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: 4(d) Rate Filing: SNG NRA Permanent Release Filing—January 2026 to be effective 2/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5082.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–438–000.
Applicants: Equitrans, L.P.
Description: 4(d) Rate Filing: Negotiated Rate Agreement—2/1/2026 to be effective 2/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5096.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–439–000.
Applicants: National Fuel Gas Supply Corporation.
Description: 4(d) Rate Filing: Housekeeping 2026 to be effective 3/2/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5125.
Comment Date: 5 p.m. ET 2/11/26.
Docket Numbers: RP26–440–000.
Applicants: Dauphin Island Gathering Partners.
Description: Compliance filing: 2024 and 2025 Annual Cashout Report to be effective N/A.
Filed Date: 1/30/26.
Accession Number: 20260130–5158.
Comment Date: 5 p.m. ET 2/11/26.
 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.

Filings in Existing Proceedings
Docket Numbers: RP11–1711–000.
Applicants: Texas Gas Transmission, LLC.
Description: Refund Report: 2025 Cash Out Filing to be effective N/A.
Filed Date: 1/29/26.
Accession Number: 20260129–5468.
Comment Date: 5 p.m. ET 2/10/26.
Docket Numbers: RP24–1035–005.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: RP24–1035 Stipulation and Agreement Tariff Record Filing to be effective 3/1/2025.
Filed Date: 1/30/26.
Accession Number: 20260130–5166.
Comment Date: 5 p.m. ET 2/11/26.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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 30, 2026.

Debbie-Anne A. Reese,
 Secretary.

[FR Doc. 2026–02428 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD26–1–000; Docket No. RD26–2–000; Docket No. RD26–3–000]

North American Electric Reliability Corporation: Notice of Staff Attendance at North American Electric Reliability Corporation Planning and Operational Studies Drafting Teams Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation: Project 2025–03 Order No. 901 Operational Studies Drafting Team Meeting, WebEx:

February 3, 2026 | 2:00 p.m.–4:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/events/02-03-26-project-2025-03-order-no.-901-operational-studies-drafting-team-meeting>.

North American Electric Reliability Corporation: Project 2025–04 Order No. 901 Planning Studies Drafting Team Meeting, WebEx:

February 3, 2026 | 2:00 p.m.–4:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/events/02-03-26-project-2025-04-order-no.-901-planning-studies-drafting-team-meeting>.

North American Electric Reliability Corporation: Project 2025–03 Order No. 901 Operational Studies Drafting Team Meeting, WebEx:

February 5, 2026 | 2:00 p.m.–4:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/events/02-05-26-project-2025-03-order-no.-901-operational-studies-drafting-team-meeting>.

North American Electric Reliability Corporation: Project 2025–04 Order No. 901 Planning Studies Drafting Team Meeting, WebEx:

February 10, 2026 | 12:00 p.m.–2:00 p.m. Eastern

Further information regarding this meeting and how to join remotely may be found at: <https://www.nerc.com/events/02-10-26-project-2025-04-order-no.-901-planning-studies-drafting-team-meeting>.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RD26–1–000: North American Electric Reliability Corporation

Docket No. RD26–2–000: North American Electric Reliability Corporation

Docket No. RD26–3–000: North American Electric Reliability Corporation

For further information, please contact Neil Yallabandi at (202) 502–8260 or Neil.Yallabandi@ferc.gov.

(Authority: 18 CFR 2.1.)

Dated: February 2, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02357 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 1889–085; Project No. 2485–071]

FirstLight MA Hydro LLC; Northfield Mountain LLC: Notice of Availability of the Final Environmental Impact Statement for the Turners Falls Hydroelectric and Northfield Mountain Pumped Storage Projects

In accordance with the National Environmental Policy Act of 1969¹ and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the applications for relicense for the Turners Falls Hydroelectric Project (Turners Falls Project) (FERC No. 1889) and Northfield Mountain Pumped Storage Project (Northfield Mountain Project) (FERC No. 2485) and has prepared a final environmental impact statement (EIS) for the projects. The projects are located on the Connecticut River near the towns of Turners Falls and Northfield (respectively) in Franklin County, Massachusetts.

The final EIS contains staff's analysis of the applicants' proposals and the alternatives for relicensing the Turners Falls and Northfield Mountain projects. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Native-American Tribes, the public, the license applicants, and Commission staff.

The Commission provides all interested persons with an opportunity to view and/or print the final EIS 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. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at <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.

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.

For further information, contact Steve Kartalia at (202) 502–6131, or stephen.kartalia@ferc.gov.

(Authority: 18 CFR 2.1.)

Dated: January 30, 2026.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2026–02423 Filed 2–5–26; 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: ER24–343–003.

Applicants: Nestlewood Solar I LLC.

Description: Notice of Non-Material Change in Status of Nestlewood Solar I LLC.

Filed Date: 1/29/26.

Accession Number: 20260129–5559.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER24–1832–003.

Applicants: North Fork Solar Project, LLC.

Description: Compliance filing: Notice of Change in Status and Revised Market-Based Rate Tariffs to be effective 2/3/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5099.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER24–1941–003.

Applicants: Liberty County Solar Project, LLC.

Description: Compliance filing: Notice of Change in Status and Revised Market-Based Rate Tariffs to be effective 2/3/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5092.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER24–2179–002.

Applicants: Bayou Galion Solar Project, LLC.

Description: Compliance filing: Notice of Change in Status and Revised Market-Based Rate Tariffs to be effective 2/3/2026.

Filed Date: 2/2/26.

Accession Number: 20260202–5091.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER24–2291–001.

Applicants: Portland General Electric Company.

Description: Compliance filing: Amended PGE BPA MO&O Agreement

¹ National Environmental Policy Act of 1969, amended (Pub. L. 91–190, 42 U.S.C. 4321–4347, as amended by Pub. L. 94–52, July 3, 1975, Pub. L. 94–83, August 9, 1975, Pub. L. 97–258, 4(b), September 13, 1982, Pub. L. 118–5, June 3, 2023).

Compliance Filing to be effective 2/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5368.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER25–554–005; ER25–1338–005; ER26–684–001; ER25–704–005.

Applicants: Amite Solar, LLC, Flat Fork Interconnection, LLC, Flat Fork Solar, LLC, Wild Plains Wind Project, LLC.

Description: Notice of Change in Status of Wild Plains Wind Project, LLC, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5561.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER25–1339–004; ER26–687–001; ER25–1348–007.

Applicants: New Madrid Solar, LLC, Forgeview Interconnection, LLC, Forgeview Solar, LLC.

Description: Notice of Change in Status of Forgeview Solar, LLC, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5562.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–505–001.

Applicants: South River Phase II, LLC.

Description: Tariff Amendment: South River Phase II, LLC, MBR Application—Deficiency Response ER26–505—to be effective 11/14/2025.

Filed Date: 2/2/26.

Accession Number: 20260202–5155.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER26–529–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Service Agreement No. 271 under Pacific Gas and Electric Company's FERC Electric Tariff Volume No. 4.

Filed Date: 1/29/26.

Accession Number: 20260129–5555.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER26–717–001.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: Tariff Amendment: ALLETE, Inc. submits tariff filing per 35.17(b); 2026–02–02 Amendment for Allete Order No. 898 Clean Up to be effective 1/1/2025.

Filed Date: 2/2/26.

Accession Number: 20260202–5125.

Comment Date: 5 p.m. ET 2/23/26.

Docket Numbers: ER26–1212–000.

Applicants: Nevada Power Company.

Description: 205(d) Rate Filing: Non-Conforming LGIA Filing to be effective 1/9/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5349.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1213–000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: 205(d) Rate Filing: Integrate into the Black Hills Power Balancing Authority Area to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5354.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1214–000

Applicants: Florida Power & Light Company.

Description: Tariff Amendment: Cancellation of NITSA No. 80 with FMPA to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5373.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1215–000

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): AMEA NITSA 2026 Rollover Filing to be effective 1/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5381.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1216–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4617 Municipal Energy Agency of Nebraska NITSA and NOA to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5398

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1217–000.

Applicants: Black Hills Power, Inc.

Description: 205(d) Rate Filing: Fourth Amended and Restated Generation Dispatch and Energy Management Agreement to be effective 4/1/2025.

Filed Date: 1/30/26.

Accession Number: 20260130–5400.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1218–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4618 Municipal Energy Agency of Nebraska NITSA and NOA to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5406.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1219–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: MEAN-City of Delta, Colorado—Network Customer Transmission Credits to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5417.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1220–000.

Applicants: Atlas Solar IV, LLC.

Description: Initial Rate Filing: Baseline New Market-Based Tariff to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5420.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1221–000.

Applicants: Black Hills Power, Inc.

Description: 205(d) Rate Filing: Fourth Amended and Restated Generation Dispatch and Energy Management Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5425.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1222–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: MEAN-City of Kimball, Colorado—Network Customer Transmission Credits to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5427.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1223–000.

Applicants: Black Hills Power, Inc.

Description: 205(d) Rate Filing: Fourth Amended and Restated Generation Dispatch and Energy Management Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5430.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26–1224–000.

Applicants: Atlas BESS IV, LLC.

Description: Initial Rate Filing: Baseline New Market-Based Tariff to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5432.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: EER26–1225–000.

Applicants: Black Hills Power, Inc.

Description: 205(d) Rate Filing: THIRD AMENDED AND RESTATED GENERATION DISPATCH AND ENERGY MANAGEMENT AGREEMENT to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5433.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: EER26–1226–000.

Applicants: Black Hills Power, Inc.

Description: 205(d) Rate Filing: Third Amended and Restated Generation Dispatch and Energy Management Agreement to be effective 4/1/2026.

Filed Date: 1/30/26.

Accession Number: 20260130–5439.

Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: EER26–1227–000.
Applicants: Atlas Solar II, LLC.
Description: Initial Rate Filing: Baseline New Market-Based Tariff to be effective 4/1/2026.
Filed Date: 1/30/26.
Accession Number: 20260130–5440.
Comment Date: 5 p.m. ET 2/20/26.
Docket Numbers: EER26–1229–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC.
Description: 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii): MAIT submits Construction Agmnts, SA No. 7211, 7224 to be effective 4/4/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5030.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1230–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 4613 Energy Keepers Market Participant Agr. to be effective 4/1/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5056.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1232–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Amendment: Notice of Cancellation of Service Agreement FERC No. 923 to be effective 1/1/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5079.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1233–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Seminole Solar Projects (Seminole V Solar + BESS) LGIA Termination Filing to be effective 2/2/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5097.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1234–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Seminole Solar Projects (Seminole VII Solar + BESS) LGIA Termination Filing to be effective 2/2/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5098.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1235–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Seminole Solar Projects (Seminole VIII Solar + BESS) LGIA Termination Filing to be effective 2/2/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5100.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1236–000.
Applicants: Pitt Solar, LLC.
Description: Initial Rate Filing: Market-Based Rate Application to be effective 3/19/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5120.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1237–000.
Applicants: Cherry Solar, LLC.
Description: Initial Rate Filing: Market-Based Rate Application to be effective 3/19/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5122.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1238–000.
Applicants: Pacific Gas and Electric Company.
Description: 205(d) Rate Filing: WDT SA 275: City and County of San Francisco Q4 2025 Filing to be effective 12/31/2025.
Filed Date: 2/2/26.
Accession Number: 20260202–5146.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1239–000.
Applicants: Baron Winds LLC.
Description: 205(d) Rate Filing: 2025 Q4 Change in Status to be effective 2/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5150.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1240–000.
Applicants: Baron Winds II LLC.
Description: 205(d) Rate Filing: 2025 Q4 Change in Status to be effective 2/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5151.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1241–000.
Applicants: Cassadaga Wind LLC.
Description: 205(d) Rate Filing: 2025 Q4 Change in Status to be effective 2/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5153.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1242–000.
Applicants: Munnsville Wind Farm, LLC.
Description: 205(d) Rate Filing: 2025 Q4 Change in Status to be effective 2/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5154.

Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1243–000.
Applicants: Green Mountain Power Corporation, ISO New England Inc.
Description: 205(d) Rate Filing: Green Mountain Power Corporation submits tariff filing per 35.13(a)(2)(iii): Green Mountain Power Order No. 898—Schedule 21 Filing to be effective 4/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5164.
Comment Date: 5 p.m. ET 2/23/26.
Docket Numbers: EER26–1244–000.
Applicants: Portland General Electric Company.
Description: 205(d) Rate Filing: PGE OATT Att P EIM Charge Codes to be effective 4/3/2026.
Filed Date: 2/2/26.
Accession Number: 20260202–5186.
Comment Date: 5 p.m. ET 2/23/26.
 Take notice that the Commission received the following electric securities filings:
Docket Numbers: EES26–28–000.
Applicants: Monongahela Power Company.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Monongahela Power Company.
Filed Date: 1/29/26.
Accession Number: 20260129–5560.
Comment Date: 5 p.m. ET 2/19/26.
 The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.
 Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.
 eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.
 For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: February 2, 2026.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2026–02360 Filed 2–5–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2026–0302; FRL–13188–01–OLEM]

The Hazardous Waste Electronic Manifest System (“e-Manifest”) Advisory Board: Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites the public to nominate experts in Information Technology (IT) to be considered for a three-year membership appointment to the Hazardous Waste Electronic Manifest System (“e-Manifest”) Advisory Board (the “Board”). Pursuant to the Hazardous Waste Electronic Manifest Establishment Act (the “e-Manifest Act” or the “Act”), EPA has established the Board to provide practical and independent advice, consultation, and recommendations to the EPA Administrator on the activities, functions, policies, and regulations associated with the Hazardous Waste Electronic Manifest (e-Manifest) System. In accordance with the e-Manifest Act, the EPA Administrator or designee will serve as Chair of the Board. This document solicits nominations for possible consideration of candidates to potentially fill a vacancy on the Board to serve as an IT expert for a three-year appointment. EPA may also consider nominations received through this solicitation to fill any unanticipated future vacancies on the Board for the following positions including an industry representative member with experience in using or representing users of the manifest system; and a state representative member responsible for processing manifests.

DATES: Nominations of candidates considered for appointment must be received on or before March 9, 2026.

ADDRESSES: Submit your nominations identified with “BOARD NOMINATION” in the subject line to Fred Jenkins, the Designated Federal Officer (DFO) of the e-Manifest Advisory Board at jenkins.fred@epa.gov.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Designated Federal Officer

(DFO), 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–0344; email address: jenkins.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2018, EPA established a national system for tracking hazardous waste shipments electronically. This system, known as “e-Manifest,” supports the modernization of the nation’s cradle-to-grave hazardous waste tracking process while saving valuable time, resources, and dollars for industry and states.

EPA established the e-Manifest system according to the Hazardous Waste Electronic Manifest Establishment Act, enacted into law on October 5, 2012. The “e-Manifest Act” authorizes the EPA to implement a national electronic manifest system and requires that the costs of developing and operating the new e-Manifest system be recovered from user fees charged to those who use hazardous waste manifests to track off-site shipments of their wastes.

This system enables users of the uniform hazardous waste manifest forms (EPA Form 8700–22 and Continuation Sheet 8700–22A) to have the option to more efficiently track their hazardous waste shipments electronically, in lieu of the paper manifest, from the point of generation, during transportation, and to the point of receipt by an off-site facility that is permitted to treat, store, recycle, or dispose of the hazardous waste. Electronic manifests obtained from the national system augment or replace the paper forms that have historically been used for this purpose, and that result in substantial paperwork costs and other inefficiencies. Congress intended that EPA develop a system that, among other things, meets the needs of the user community and decreases the administrative burden associated with the current paper-based manifest system on the user community. By enabling the transition from a paper-intensive process to an electronic system, EPA estimates e-Manifest will ultimately save state and industry users more than \$50 million annually, once electronic manifests are widely adopted. The system also serves as a national reporting hub and database for all manifests and shipment data. To ensure that these goals are met, the Act directs EPA to establish a Board to assess the effectiveness of the electronic manifest system and make recommendations to the Administrator for improving the system.

In addition, the e-Manifest Act directs EPA to develop a system that attracts sufficient user participation and service revenues to ensure the viability of the system. As a result, the Act provides EPA broad discretion to establish reasonable user fees, as the Administrator determines are necessary, to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system.

e-Manifest aligns with the Agency’s E-Enterprise business strategy. E-Enterprise for the Environment is a transformative 21st century strategy—jointly governed by states and EPA—for modernizing government agencies’ delivery of environmental protection. Under this strategy, the Agency will streamline its business processes and systems to reduce reporting burden on states and regulated facilities and improve the effectiveness and efficiency of regulatory programs for EPA, states, and tribes.

EPA has established the Board in accordance with the provisions of the e-Manifest Act and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Board is in the public interest and supports EPA in performing its duties and responsibilities. Pursuant to the e-Manifest Act the Board is comprised of nine members, of which one member is the Administrator (or a designee), who will serve as Chair of the Board, and eight members are individuals appointed by the EPA Administrator:

- At least two of whom have expertise in information technology (IT);
- At least three of whom have experience in using, or represent users of, the manifest system to track the transportation of hazardous waste under federal and state manifest programs; and
- At least three state representatives responsible for processing those manifests.

Pursuant to the e-Manifest Act, the Board will meet publicly at least annually to provide EPA recommendations on matters related to the operational activities, functions, policies, and/or regulations of EPA under the e-Manifest Act.

Nominations

Any interested person and/or organization may nominate qualified individuals for membership. All nominations will be considered; however, applicants need to be aware of the e-Manifest Advisory Board membership requirements pursuant of the e-Manifest Act.

IT nominees should have core competencies and experience in large-scale systems and application development, integration, and implementation. This may include competency and experience with managing complex systems used by multiple user communities; ensuring data availability, integrity, and quality; user help desk and support; as well as expertise relevant to the complexities of an electronic manifest system. Examples of this expertise may include, but are not limited to: Expertise with web-based and mobile technologies, particularly those that support large scale operations for geographically assorted users; expertise in IT security, including perspective on federal IT security requirements; expertise in electronic signature and user management approaches; expertise with scalable hosting solutions such as cloud-based hosting; and expertise in user experience. Existing knowledge of, or willingness to gain an understanding of, EPA shared services and enterprise architecture is a plus.

Another plus for any nominee is experience in setting and/or managing fee-based systems in general.

Additional criteria used to evaluate nominees will include:

- Excellent interpersonal, oral, and written communication skills;
- Demonstrated experience developing group recommendations;
- Willingness to commit time to the Board and demonstrated ability to work constructively on committees;
- Absence of financial conflicts of interest;
- Impartiality (including avoiding the appearance of a loss of impartiality)

Nominees who represent states and industry for consideration to fill any unanticipated vacancies among the state or industry representative membership of the Board should have a comprehensive knowledge of hazardous waste generation, transportation, treatment, storage, and disposal under the Resource Conservation and Recovery Act (RCRA) Subtitle C at the federal, state, and local levels.

Nominees who represent states should have comprehensive knowledge of state programs that use manifest data.

Nominees who represent industry should be familiar with e-Manifest and have strong knowledge of existing industry systems/devices/approaches and business operations to provide valuable input on e-Manifest integration into current industry data systems.

All nominations must include a resume, which provides the nominee's background, experience, and educational qualifications, as well as a

brief statement (one page or less) describing the nominee's interest in serving on the Board and addressing the other criteria previously described. Nominees are encouraged to provide any additional information that they feel would be useful for consideration, such as: availability to participate as a member of the Board; how the nominee's background, skills, and experience would contribute to the Board; and any concerns the nominee has regarding membership. Nominees should be identified by name, occupation, position, current business address, email, and telephone number.

Interested candidates may self-nominate. The agency will acknowledge receipt of nominations. Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings in person. Additionally, candidates selected to serve as IT "Expert" Members will be designated as Special Government Employees (SGEs) or consultants. Candidates designated as SGEs will be required to fill out the "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees" (EPA Form 3310-48). This confidential form provides information to the EPA ethics officials to determine whether there is a conflict between the SGE's public duties and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations. One example of a potential conflict of interest may be for an IT professional(s) serving in an organization which is awarded any related e-Manifest system development contract(s).

Authority: 5 U.S.C. App. 2.

Andrew Baca,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2026-02342 Filed 2-5-26; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OLEM-2026-0301; FRL-13189-01-OLEM]

Hazardous Waste Electronic Manifest Program ("e-Manifest"): Request for Public Input on Charge Questions to the e-Manifest Advisory Board and on a Potential Topics of e-Manifest System Industry Users Conference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites the public to:

Provide input for potential charge questions and/or charge question topics which EPA could consider when consulting the e-Manifest Advisory Board ("Advisory Board") regarding the operations of EPA's hazardous waste electronic manifest system ("e-Manifest"). Relevant topics could include matters related to the operational activities, functions, policies, and regulations of EPA under the e-Manifest Act, and provide input on topics for an EPA sponsored e-Manifest Industry Users Conference.

DATES: Advisory Board charge question and/or charge question topics recommendations and e-Manifest users conference topics recommendations comments must be received on or before March 9, 2026.

ADDRESSES: Advisory Board charge question recommendations and e-Manifest Users conference topics recommendations should be submitted to the public docket under docket No. EPA-HQ-OLEM-2026-0301 at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Designated Federal Officer (DFO), U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566-0344, email address: jenkins.fred@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

The e-Manifest Advisory Board was established pursuant to the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act), and in accordance with the provisions of the Federal Advisory Committee Act (FACA). The purpose of the Advisory Board is to provide recommendations to the EPA Administrator on matters related to the e-Manifest program activities, functions, policies, and regulations of the EPA under the e-Manifest Act. EPA consults the Advisory Board at least annually. EPA is inviting the public to provide input for potential charge questions and/or charge question topics which EPA could consider when consulting the Advisory Board.

To further our outreach and engagement efforts, EPA's e-Manifest program is exploring the possibility of hosting an e-Manifest industry users conference. The purpose of a potential e-Manifest industry users conference would be to provide a forum for

industry (non-regulatory) users such as waste generators, transporters, TSDFs, and brokers to participate in moderated discussions centered on the electronic manifest workflow. EPA is requesting the public to provide topics for EPA to consider for an e-Manifest industry users conference.

The Hazardous Waste Electronic Manifest System Advisory Board is established in accordance with the provisions of the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act) and the Federal Advisory Committee Act (FACA). The Advisory Board is in the public interest and supports the EPA in performing its duties and responsibilities. The Advisory Board meets annually to discuss, to evaluate the effectiveness of, and to provide recommendations about the system to the EPA Administrator. For more information, please visit the Advisory Board website at <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board>.

To help ensure that the e-Manifest system is meeting the needs of its user community, EPA is inviting the public to suggest potential charge questions and/or charge question topics for which the Agency could consider asking the Advisory Board to address during future public meetings of the Advisory Board. A charge includes focused questions on a specific topic upon which the Agency could seek to obtain advice or recommendations from the Advisory Board. Relevant topics could include matters related to the operational activities, functions, policies, and regulations of EPA under the e-Manifest Act. For an example of a focused set of charge questions please visit the following document at <https://www.regulations.gov/document/EPA-HQ-OLEM-2025-0391-0004>. The topic of this example set of charge questions posed to the Board by EPA was “Accelerating the Future: Phasing out Paper Manifest to Unlock the Full Potential of e-Manifest”. This example topic was from the September 23–24, 2025, e-Manifest Advisory Board public meeting. For more information about this example, please visit: <https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-advisory-board-virtual-meeting-september-23>.

Also, in support of meeting the needs of the e-Manifest user community, EPA is exploring hosting a potential e-Manifest industry users conference. The purpose of the industry users conference would be to provide a forum for industry (non-regulatory) users such as waste generators, transporters,

TSDFs, and brokers to participate in moderated discussions centered on the electronic manifest workflow. EPA is requesting the public to provide topics for EPA to consider for an e-Manifest industry users conference.

While EPA is soliciting public input on potential future charge questions for the Advisory Board and topics for considerations for a future potential e-Manifest users conference, EPA notes the Agency has sole discretion in determining charge questions ultimately posed to the Advisory Board as well as topics selected at an e-Manifest Users conference. EPA also notes that the Advisory Board only provides advice and recommendations to EPA, and EPA in turn considers such advice when making decisions pertaining to the e-Manifest system.

Andrew Baca,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2026–02343 Filed 2–5–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OPRM–FAD–208]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–993–3272 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS) Filed January 26, 2026 10 a.m. EST Through February 2, 2026 10 a.m. EST Pursuant to CEQ Guidance on 42 U.S.C. 4332.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA’s comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20260000, Final, BLM, OR, Grassy Mountain Mine, Review Period Ends: 03/06/2026, Contact: Caryn Burri 541–473–6229.

EIS No. 20260001, Draft, FERC, MS, Tennessee Gas Pipeline Company, LLC et al. re the Mississippi Crossing Project and the South System Expansion 4 Project, Comment Period Ends: 03/23/2026, Contact: Office of External Affairs 866–208–3372.

EIS No. 20260002, Final, FERC, VT, Hydropower Licenses re the Wilder Hydroelectric Project et al., Review

Period Ends: 03/09/2026, Contact: Office of External Affairs 866–208–3372.

EIS No. 20260003, Final, FERC, MA, Hydropower Licenses re the Northfield Mountain Pumped Storage Project et al., Review Period Ends: 03/09/2026, Contact: Office of External Affairs 866–208–3372.

EIS No. 20260004, Final, BLM, OR, Bridge Creek Area Allotment Management Plans, Review Period Ends: 03/09/2026, Contact: Donald Rotell 541–573–4400.

EIS No. 20260005, Final, FAA, FL, SpaceX Starship-Super Heavy Launch Vehicle at Launch Complex 39A at the Kennedy Space Center, Merritt Island, Florida, Contact: Eva Long 202–267–9305.

EIS No. 20260006, Draft, NRCS, OR, Central Oregon Irrigation District Pilot Butte Canal Infrastructure Modernization Project, Comment Period Ends: 03/31/2026, Contact: Gary Diridoni 503–414–3092.

EIS No. 20260007, Final, USACE, MI, Enbridge Line 5 Tunnel Project, Review Period Ends: 03/09/2026, Contact: Katie Otanez 313–226–5479.

EIS No. 20260008, Draft, USDA, GA, Dresden-Talbot County 500kV Transmission Line Construction, Dresden 500/230kV Substation Modification, and Talbot County 230kV Substation Modification Project, Comment Period Ends: 02/09/2026, Contact: Suzanne Kopich 202–961–8514.

Amended Notice

EIS No. 20250181, Draft Supplement, BLM, CA, Central Coast Field Office Oil and Gas, Leasing and Development, California, Comment Period Ends: 03/13/2026, Contact: Sarah Mathews 831–582–2257. Revision to FR Notice Published 01/16/2026; Extending the Comment Period from 03/06/2026 to 03/13/2026.

EIS No. 20250182, Draft Supplement, BLM, CA, Bakersfield Field Office Oil and Gas Leasing and Development, California, Comment Period Ends: 03/13/2026, Contact: Sarah Mathews 661–391–6145. Revision to FR Notice Published 01/16/2026; Extending the Comment Period from 03/06/2026 to 03/13/2026.

Dated: February 3, 2026.

Nancy Abrams,

Deputy Director, Federal Activities Division.

[FR Doc. 2026–02362 Filed 2–5–26; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION**Board of Directors Meeting**

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, February 11, 2026.

ADDRESSES: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or virtually. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov*, select “News & Events,” then select “Board Meetings.” From there, access the linked “Instructions for board meeting visitors” and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703-883-4009. TTY: 703-883-4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of December 10, 2025, Minutes
- Review and Setting of Insurance Premium Accrual Rates
- Payment from Allocated Insurance Reserves Accounts
- Policy Statement—Allowance for Insurance Fund Loss
- Policy Statement—Alternative Means of Dispute Resolution
- Policy Statement—Receivership and Conservatorship Counsel

Portions Closed to the Public

- Annual Report on Contracts
- Annual Report on Whistleblower Activity

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2026-02455 Filed 2-5-26; 8:45 am]

BILLING CODE 6705-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION**Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager**

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institution effective as of the Date Closed as indicated in the listing.

SUPPLEMENTARY INFORMATION: This list (as updated from time to time in the **Federal Register**) may be relied upon as “of record” notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992, issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions that have been placed in liquidation, please visit the Corporation website at www.fdic.gov/bank/individual/failed/banklist.html, or contact the Chief, Receivership Oversight at RO@fdic.gov or at Division of Resolutions and Receiverships, FDIC, 600 North Pearl Street, Suite 700, Dallas, TX 75201.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC ref. No.	Bank name	City	State	Date closed
10550	Metropolitan Capital Bank & Trust	Chicago	IL	01/30/2026

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 4, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026-02363 Filed 2-5-26; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION**Notice of Termination of Receiverships**

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the following insured

depository institution, was charged with the duty of winding up the affairs of the former institution and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10536	The First State Bank	Barboursville	WV	02/01/2026

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver that FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements,

assignments, and deeds. Effective on the termination date listed above, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 4, 2026.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2026-02364 Filed 2-5-26; 8:45 am]

BILLING CODE 6714-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**Sunshine Act Meetings**

TIME AND DATE: 10 a.m., Wednesday, February 25, 2026.

PLACE: The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor v. W.G. Yates and Son's Construction Company*, Docket No. SE 2023-0094 (Issues include: (1) whether the Judge erred in concluding that the operator violated the safety standard at 30 CFR 56.4500 and (2) whether the Judge erred in concluding that the violation was significant and substantial).

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Rory P. Smith (202) 525-8649/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1-(866) 236-7472; Passcode: 678-100.

Authority: 5 U.S.C. 552b.

Dated: February 4, 2026.

Rory P. Smith,

Attorney-Advisor.

[FR Doc. 2026-02446 Filed 2-4-26; 4:15 pm]

BILLING CODE 6735-01-P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**Sunshine Act Meetings**

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 91 FR 1789, January 15, 2026.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Meeting was originally scheduled for 10 a.m., on Thursday, February 5, 2026.

CHANGES IN THE MEETING: The meeting is cancelled and will be rescheduled.

CONTACT PERSON FOR MORE INFORMATION: Rory P. Smith (202) 525-8649/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Authority: 5 U.S.C. 552b.

Dated: February 4, 2026.

Rory P. Smith,

Attorney-Advisor.

[FR Doc. 2026-02356 Filed 2-4-26; 11:15 am]

BILLING CODE 6735-01-P

FEDERAL RESERVE SYSTEM**Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company**

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Deputy Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than February 23, 2026.

A. Federal Reserve Bank of Minneapolis (Mark Nagle, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291. Comments can also be sent electronically to MA@mpls.frb.org:

1. *The 2012 Revocable Trust of Lynne Singer Redleaf, Lynne Singer Redleaf, as trustee, and Benleaf, LLC, Andrew J. Redleaf, as manager, all of Minneapolis, Minnesota; as a group acting in concert,*

to acquire voting shares of Park Financial Group, Inc., Minneapolis, Minnesota, and thereby indirectly acquire voting shares of Park State Bank, Duluth, Minnesota. Andrew J. Redleaf was previously permitted by the Federal Reserve System to acquire voting shares of Park Financial Group, Inc., in an individual capacity.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-02390 Filed 2-5-26; 8:45 am]

BILLING CODE 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)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business

information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Deputy Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than March 9, 2026.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to KCAApplicationComments@kc.frb.org:

1. *Tri-County Company, Stuart, Nebraska*; to acquire Butte State Bank, Butte, Nebraska. In addition, *Tri-County Company* would engage in insurance agency activity in a location where the bank holding company or a subsidiary of the bank holding company has a lending office and that has a population not exceeding 5,000 through its acquisition of substantially all the assets of Butte State Agency, Butte, Nebraska, pursuant to section 225.28(b)(11)(iii)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026–02391 Filed 2–5–26; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. P072108]

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension; Correction

AGENCY: Federal Trade Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Trade Commission (“Commission”) published a document in the **Federal Register** of January 23, 2026, concerning its proposal to extend for an additional three years the Office of Management and Budget (“OMB”) clearance for its shared enforcement authority with the Consumer Financial Protection Bureau (“CFPB”) for information collection requirements contained in the CFPB’s Regulation O. Shortly after publication, Commission staff learned the document contained an incorrect reference to the Funeral Rule. The Commission issues

this correction to reflect the corrected reference to Regulation O.

FOR FURTHER INFORMATION CONTACT:

Stephanie Rosenthal, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–3332.

SUPPLEMENTARY INFORMATION: The notice document submitted by Commission staff for publication contained an incorrect reference to the Funeral Rule instead of the intended reference to Regulation O.

Correction

In notice FR Doc. 2026–01233 appearing at 91 FR 2933 in the **Federal Register** of Friday, January 23, 2026, make the following correction. On page 2934, in the last sentence of the first paragraph of the Abstract section, the reference to “the Funeral Rule” is corrected to read “Regulation O”.

Dated: February 4, 2026.

Joel Christie,

Acting Secretary.

[FR Doc. 2026–02457 Filed 2–5–26; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 251 0060]

Sevita and BrightSpring; Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 9, 2026.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: “Sevita and BrightSpring; File No. 251 0060” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your

comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Richard Mosier (202–326–3521), Mergers IV Division, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: <https://www.ftc.gov/news-events/commission-actions>.

The public is invited to submit comments on this document. For the Commission to consider your comment, we must receive it on or before March 9, 2026. Write “Sevita and BrightSpring; File No. 251 0060” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the agency’s heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “Sevita and BrightSpring; File No. 251 0060” on your comment and on the envelope, and mail your comment by overnight service to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information,

such as your or anyone else's Social Security number; date of birth; driver's license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on <https://www.regulations.gov>—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before March 9, 2026. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Centerbridge Seaport Acquisition Fund, through its subsidiary National Mentor Holdings, Inc., ("Sevita"), and BrightSpring Health Services, Inc. ("BrightSpring") (collectively, "Respondents"). The Consent Agreement is designed to remedy the anticompetitive effects that may result from Sevita's acquisition of certain assets of BrightSpring, namely the ResCare assets. Pursuant to an agreement dated January 17, 2025, Sevita proposes to acquire the ResCare assets in a transaction valued at approximately \$835 million ("the Transaction"). The Commission alleges in its Complaint that the Transaction, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the market for the provision of services to individuals with intellectual and developmental disabilities ("IDD") in an intermediate care facility ("ICF") in three States: Indiana, Louisiana, and Texas. The Consent Agreement will remedy the alleged violations by preserving the competition that otherwise would be eliminated by the Transaction.

Under the terms of the proposed Decision and Order ("Order"), Respondents are required to divest Sevita's ICF facilities in certain core-based statistical areas ("CBSAs") in Indiana (Evansville, Indianapolis, Muncie, Bedford, and Jasper), Louisiana (Baton Rouge), and Texas (Austin, Beaumont, Houston, and San Angelo). The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain all divestiture assets in the normal course of business until the assets are ultimately divested. The Commission issued the Order to Maintain Assets as final.

The Commission has placed the Consent Agreement, along with the proposed Order and the Order to Maintain Assets, on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Order, along with the comments received, to make a final

decision as to whether it should withdraw, modify, or make final the proposed Order. The Commission is issuing the Order to Maintain Assets when the Consent Agreement is placed on the public record.

I. Respondents

Respondent Centerbridge Seaport Acquisition Fund is a limited partnership, with its headquarters address at 375 Park Avenue, 11th Floor, New York, New York. Respondent Centerbridge Seaport controls Respondent Sevita, with its headquarters at 6600 France Avenue South, Edina, Minnesota. Sevita is the nation's largest provider of home and community-based services for individuals with IDD. Sevita employs approximately 41,000 employees, serves approximately 50,000 individuals in 40 States, and generates approximately \$3 billion in annual revenue.

Respondent BrightSpring Health Services, Inc., is a corporation, with its headquarters address at 805 N Whittington Parkway, Louisville, Kentucky. ResCare is the nation's second largest provider of home- and community-based services for individuals with IDD. ResCare operates in 25 States. In 2024, the business generated approximately \$1 billion in revenue.

II. The Structure of the Markets

The Transaction raises competitive concerns in the market for the provision of ICF services to individuals with IDD in certain CBSAs in Indiana (Evansville, Indianapolis, Muncie, Bedford, and Jasper), Louisiana (Baton Rouge), and Texas (Austin, Beaumont, Houston, and San Angelo).

There are approximately eight million individuals in the United States with IDD, whose care represents over \$70 billion in annual spending. Individuals with IDD rely on a broad range of long-term services and supports, including assistance with activities such as bathing, dressing, shopping, and cooking, as well as employment-related services, behavioral support, and supervision to complete tasks (collectively, "IDD Services"). IDD Services providers typically offer a variety of services depending on the needs of the individual. Medicaid is the predominant payer for these services.

The field of IDD Services encompasses various service models, broken down generally into institutional versus home- and community-based care. In 1971, Congress enacted legislation that provided Federal funding for ICFs, residential facilities licensed and certified by State agencies.

ICFs are typically run by private parties, such as Sevita and BrightSpring, though some are State-owned. In 1981, Congress enacted legislation allowing Medicaid funding for IDD Services through a different service model, commonly referred to as the Home and Community Based Services (“HCBS”) waiver program. This model provides vouchers for more flexible spending and enables individuals with IDD to get long-term support in their homes and communities, rather than more institutionalized settings.

Individuals with IDD can receive Medicaid funding for their long-term support needs by choosing either services through an ICF or the HCBS waiver program. ICFs provide the most structured setting compared to other residential settings for people with IDD. The provision of ICF services is an entitlement program, meaning that if an individual is eligible for an ICF level of care, the individual has a legal right to receive that service under Medicaid. In contrast, HCBS are optional Medicaid benefits and therefore subject to admission restrictions.

Other types of IDD Services are excluded from the relevant market, including HCBS, State-owned ICFs in Texas, and non-residential services. HCBS are excluded from an ICF services market because HCBS are not substitutable for ICF services and are offered under different competitive conditions. HCBS do not provide the same oversight, structure, or level of support as ICF services. As a result, individuals cannot substitute HCBS for ICF residential services. Residential services provided in State-owned facilities in Texas (referred to as State Supported Living Centers or “SSLCs”) are distinct from ICF residential services. While SSLCs are ICFs that provide residential services, these facilities are large, secured settings with higher reimbursements that provide services to a distinct population. SSLCs are located in more isolated areas and can house hundreds of individuals. They also serve a distinct population: most residents are behaviorally or medically complex and are involuntary (*i.e.*, court-ordered). Individuals cannot substitute SSLCs for ICF residential services.

Non-residential services such as day habilitation and other periodic services are excluded from an ICF services market. Periodic services are intermittent and are less than 24 hours. The ICF services market excludes periodic services because such services are not substitutable for residential services and are offered under different competitive conditions. Residential

services are 24-hour services provided in a residential setting and, as a result, individuals cannot substitute periodic or intermittent services for 24-hour residential services.

The relevant geographic markets in which to analyze the effects of the Transaction are likely no broader than individual CBSAs because this geography reflects individuals’ preferences to receive ICF residential services close to family or their communities.

Certain CBSAs in Indiana, Louisiana, and Texas are highly concentrated. In Indiana, five CBSAs (Evansville, Indianapolis, Muncie, Bedford, and Jasper) meet the 2023 Merger Guidelines’ Guideline 1 structural presumption for an ICF residential services market with a change in HHI greater than 100 and a combined share of over 30 percent. The combined company would have market shares well over 30 percent in the five CBSAs at issue.

In Louisiana, the Baton Rouge CBSA meets the Guideline 1 structural presumption for an ICF residential services market with a change in HHI greater than 100 and a combined share of over 30 percent. The combined company would have a market share well over 30 percent in the Baton Rouge CBSA.

In Texas, four CBSAs (Austin, Beaumont, Houston, and San Angelo) meet the Guideline 1 structural presumption for an ICF residential services market with a change in HHI greater than 100 and a combined share of over 30 percent. The combined company would have market shares well over 30 percent in the four CBSAs at issue.

III. Competitive Effects

The Transaction will eliminate head-to-head competition between Sevita and BrightSpring in each relevant market. The competitive effects from the Transaction center on decreased quality and the reduction of consumer choice.

Respondents are each other’s closest competitor. Respondents recognize that maintaining high occupancy rates and keeping their ICFs full improves their revenues and profits. Referrals are central to their profits and, accordingly, Respondents each attempt to increase their own referrals, improve conversion of referrals, and then reduce discharges of current residents.

To meet census and occupancy metrics, Respondents compete with each other on quality; higher quality service is understood to increase referrals and decrease discharges and vacancies. Moreover, consumer choice

is a central, and historical, concept in the IDD Services community. Following an industry-wide push toward the deinstitutionalization of IDD Services after the Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), the core tenet of the modern IDD Services industry is to provide individuals the freedom to choose whether to reside in an ICF, a community setting, or in their own homes. “Choice” includes choice of provider, setting, and services. According to State and local regulators, as well as non-profits and advocacy groups, choice of where to live is integral to the well-being of individuals with IDD.

Reimbursement rates for ICFs (*i.e.*, prices) are set by State Medicaid agencies pursuant to Federal guidelines, meaning the merging parties typically do not primarily compete on price. Antitrust law, however, is not confined to price effects alone; it safeguards consumers—here, individuals with IDD—from a broader spectrum of harms. A substantial lessening of competition to provide ICF services can manifest along non-price dimensions, most notably in quality and choice. Quality harms occur when reduced rivalry diminishes incentives to maintain, invest in, or improve facilities, staffing levels and training, care standards, safety protocols, and individualized services—critical factors for vulnerable populations. Choice harms arise when consolidation limits the variety of providers, curtailing families’ ability to select facilities aligned with their unique needs and preferences. The presence of regulatory oversight does not mitigate the harm to competition in the relevant markets. The ability to credibly sanction IDD providers ultimately rests on regulators’ ability to move residents out of offending facilities to alternative providers. The combined company’s high market shares in the relevant markets, and the lack of meaningful alternative options to which residents can turn, suggests that the threat of regulatory sanctions would not meaningfully prevent the harm from the loss of quality competition. In fact, the Transaction could heighten quality concerns to the extent reduced alternatives impede Federal and State regulators’ ability to effectively enforce sanctions for quality deficiencies.

Entry or expansion into the ICF services market in the relevant geographic markets is unlikely to be timely, likely, or sufficient to offset anticompetitive harms caused by the Transaction. There are significant barriers to entry and expansion for ICF service providers. Regulations, market

demand, and market dynamics all limit entry and expansion of ICFs.

IV. The Proposed Order and the Order To Maintain Assets

The proposed Order effectively remedies the competitive concerns raised by the Transaction in each of the CBSAs at issue. Pursuant to the proposed Order, Respondents are required to divest Sevita's ICFs in the CBSAs at issue. Respondents must accomplish these divestitures no later than 10 days after Sevita consummates the Transaction. The proposed Order further requires Sevita to maintain the economic viability, marketability, and competitiveness of the divested facilities until the divestiture to Dungarvin Group, Inc. ("Dungarvin") is complete.

Dungarvin appears to be a suitable purchaser with experience acquiring and improving residential facilities and services for individuals with IDD. Dungarvin is financially sound and well-positioned to integrate the divestiture assets quickly and effectively. Dungarvin's previous industry experience, business plan, and financial statements show that it will be able to effectively operate the divestiture assets and preserve existing competition in the affected CBSAs. The company has demonstrated a successful track record over more than a decade of acquisitions, including into novel State markets, and its business plan includes viable plans for the development and improvement of the divested assets. Dungarvin also has the financial capacity to acquire these assets and ensure their continued operation going forward.

The proposed Order provides Dungarvin with the assets and support necessary to take over the divested facilities in Indiana, Louisiana, and Texas, and provide effective competition in the affected CBSAs. The proposed Order contains several provisions to help ensure the effectiveness of the relief. For example, Sevita has agreed to an Order to Maintain Assets that requires Sevita to operate and maintain the divestiture assets in the ordinary course of business consistent with past practices until such assets are fully transferred to Dungarvin. The Order also requires Sevita to provide transition services to Dungarvin as it integrates the divestiture assets to enable Dungarvin to operate similarly to how Respondents operated.

The proposed Order prohibits Sevita from re-acquiring any of the divested facilities for a period of 10 years. The proposed Order also requires Sevita to notify the Commission before acquiring

any ICFs located within any of the same CBSAs as the divested facilities. The prior notice requirements are helpful where, as in this matter, future acquisitions in already-concentrated markets are likely but could fall below the Hart-Scott-Rodino Act premerger notification thresholds.

The proposed Order also includes provisions designed to ensure the effectiveness of the relief, including a provision that allows the Commission to appoint an independent third party as a Monitor to oversee Respondents' compliance with the requirements of the proposed Order. Respondents are also required to report on how they are complying with the Order, submit compliance reports, maintain specific written communications, and grant representatives of the Commission access to information and personnel for purposes of determining compliance with the Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2026-02458 Filed 2-5-26; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10578, CMS-10934, and CMS-R-306]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing

collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by March 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 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment.

1. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers; *Use:* This information collection (IC) ensures compliance with Emergency Preparedness Conditions of Participation (CoPs) for Medicare and Medicaid certified providers and suppliers. The CoPs, established through the final rule published at *Medicare and Medicaid Programs; Emergency Preparedness Requirements for Medicare and Medicaid Participating Providers and Suppliers*, 81 FR 63860 (September 16, 2016) and subsequently revised per 84 FR 51732 (September 30, 2019), require facilities to develop and maintain four core elements: (1) risk assessment and emergency plan; (2) policies and procedures; (3) communication plan; and (4) training and testing program.

This reinstatement captures the burden for existing providers to maintain and annually update their emergency preparedness programs (originally developed in 2016/2017) and for newly certified facilities to initially develop required components. The information is reviewed by State survey agencies during certification surveys to establish compliance with Medicare CoPs, ensuring patient health and safety. This reinstatement includes a newly added facility type—Rural Emergency Hospitals (REHs), created through the Consolidated Appropriations Act of 2021. *Form Number:* CMS–10578 (OMB control number 0938–1325); *Frequency:* Annually and biennially; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profits institutions; *Number of Respondents:* 180,915; *Total Annual Responses:* 180,915; *Total Annual Hours:* 1,251,158. (For policy questions regarding this collection contact Claudia Molinar at 410–786–8445.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* 13th SOW Quality Innovation Network—Quality Improvement Organization (QIN–QIO) and American Indian Alaskan Native (AIAN) Measure Data Collection; *Use:* The Quality Innovation Network—Quality Improvement Organization (QIN–QIO) program and American Indian Alaskan Native (AIAN) program assists providers/practices with high-quality, hands-on quality improvement assistance toward meeting their needs, and the healthcare quality and safety

goals for beneficiaries. The purpose of this new information collection within these programs is to quantify performance and improvement in a broad set of quality measures that are not currently available from other sources. Selected measures are derived from the Merit Based Incentive Payment System (MIPS), the Hospital Inpatient Quality Reporting Program (HIQR), the Hospital Outpatient Quality Reporting Program (HOQR), and the CDC National Healthcare Safety Network (NHSN).

Measure data collection is an integral part of the quality improvement process. It is the primary source of knowledge about quality of care, allowing Quality Improvement (QI) practitioners to understand current state and quantitatively measure progress and effectiveness. There are three primary user categories for this data collection:

- Participants in the QIO program will use measure data from their facilities/practices to implement their own quality improvement efforts, and benefit from the collection and analysis of data from other facilities and practices to contextualize progress towards QI goals.

- QI contractors (both QIOs and the AIAN contractor) will use measure data to direct their efforts and understand the effectiveness of interventions, to measure progress towards their contractual objectives, and to report on progress to CMS.

- CMS will use the collected measure data along with derived analytic products to track the success of the program, to inform strategic decisions and priorities, and to calculate return on investment.

Form Number: CMS–10934 (OMB control number: 0938–NEW); *Frequency:* Quarterly; *Affected Public:* Private Sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 16,735; *Total Annual Responses:* 66,940; *Total Annual Hours:* 1,471,284. (For policy questions regarding this collection contact Geoffrey Berryman at (410)786–8766.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Conditions of Participation for Psychiatric Residential Treatment Facilities’ (PRTFs) Use of Restraint & Seclusion; *Use:* We are requesting reinstatement of the previously approved information collection. This collection supports CMS’s oversight of the use of involuntary “restraint” and “seclusion”—interventions used to manage patients who pose a danger to themselves or others, in psychiatric

residential treatment facilities (PRTFs) that serve individuals under age 21. As authorized under the Social Security Act, the Medicaid program allows federal funding available for state expenditures under an approved State Medicaid plan for inpatient psychiatric services in both hospital and non-hospital settings. Non-hospital settings, defined as PRTFs, serve individuals under age 21 with psychiatric conditions that require physician-directed inpatient care in a residential setting.

The requirements under 42 CFR 483.350 *et seq.* are used by CMS to monitor compliance in Psychiatric Residential Treatment Facilities (PRTFs). Compliance is assessed by state surveyors through on-site surveys and is used to determine a facility’s eligibility for Medicare certification and re-certification. PRTFs are typically surveyed at least once every six years.

Form Number: CMS–R–306 (OMB control number: 0938–0833); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 366; *Total Annual Responses:* 1,376,621; *Total Annual Hours:* 439,623. (For policy questions regarding this collection contact Claudia Molinar at 410–786–8445.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026–02371 Filed 2–5–26; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10224]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing

collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 7, 2026.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

Under the PRA (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS HCPCS Modification to Code Set Form; *Use:* The Healthcare Common Procedure Coding System (HCPCS) Level II code set is one of the standard code sets used for this purpose. The HCPCS Level II code set, also referred to as alpha-numeric codes, is a standardized coding system that is used primarily to identify items, supplies, and services not included in the HCPCS Level I Current Procedural Terminology (CPT®) codes, such as ambulatory services and durable medical equipment, prosthetics, orthotics, and supplies when used in the home or outpatient setting as well as certain drugs and biologicals. Because Medicare and other insurers cover a variety of these services and supplies, HCPCS Level II codes were established for assignment by insurers to identify items on claims. HCPCS Level II classifies similar items or services that are medical in nature into categories for the purpose of efficient claims processing. For each alpha-numeric HCPCS code, there is descriptive terminology that identifies a category of like items.

As stated in 42 CFR Sec. 414.40(a) CMS establishes uniform national definitions of services, codes to represent services, and payment modifiers to the codes. The HCPCS code set has been maintained and distributed via modifications of codes, modifiers and descriptions, as a direct result of data received from applicants. Thus, information collected in the application is significant to code set maintenance. The HCPCS code set maintenance is an ongoing process, as changes are implemented and updated quarterly (for drug and biological products) and biannual (for non-drug and non-biological items or services); therefore, the process requires continual collection

of information from applicants on a quarterly and bi-annual basis. As new technology evolves and new devices, drugs and supplies are introduced to the market, applicants submit applications to CMS requesting modifications to the HCPCS Level II code set. *Form Number:* CMS-10244 (OMB control number: 0938-1042); *Frequency:* Annually; *Affected Public:* Private sector, Business or other for-profit; Number of Respondents: 250; Total Annual Responses: 250; Total Annual Hours: 2,500. (For policy questions regarding this collection contact Sundus Ashar at 410-786-0750.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-02430 Filed 2-5-26; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #: 0970-0406]

Submission for Office of Management and Budget Review; ACF Performance Progress Report, ACF-OGM-SF-PPR-B

AGENCY: Office of Grants Management, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Grants Management (OGM), in the Administration for Children and Families (ACF) is requesting a 3-year extension of the form ACF-OGM-SF-PPR-B (Office of Management and Budget (OMB) #0970-0406, expiration 1/31/2026). There are minor changes proposed to this form to align with the requirements in 2 CFR 200.329 and reduce recipient burden by reducing the number of questions on the form. Additionally, the number of respondents has been reduced based on program office feedback.

DATES: Comments due March 9, 2026.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202602-0970-002. You can also

obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ACF OGM is proposing the continued collection of program performance data for ACF's discretionary grantees using the existing ACF-OGM-SF-PPR-B (OMB #0970-0406, expiration 1/31/2026). OMB grants policy requires recipients to report on performance. Specific

citations are contained in 2 CFR part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

ACF requests to extend approval of the form with minor changes proposed to reduce respondent burden. Specifically, ACF proposes to remove four of the questions on the form. The remaining questions align directly with the requirements in 2 CFR 200.231. The form, developed by OGM, was created from the basic template of the OMB-approved reporting format of the Program Performance Report. OGM uses

this data to ensure recipients are proceeding in a satisfactory manner in meeting the approved goals and objectives of the project, and to decide if funding should be continued for another budget period.

Respondents: ACF discretionary grantees. State governments, Native American Tribal governments, Native American Tribal Organizations, Local Governments, Universities, and Nonprofits with or without 501(c)(3) status with the Internal Revenue Service (IRS).

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ACF-OGM-SF-PPR-B	2,000	2	.33	1,320

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 30 days of this publication.

Authority: 2 CFR part 200.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2026-02323 Filed 2-5-26; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families**

[Office of Management and Budget #0970-0036]

Submission for Office of Management and Budget Review; ORR-6 Performance Report

AGENCY: Office of Refugee Resettlement, Administration for Children and

Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services seeks Office of Management and Budget (OMB) approval for a 3-year extension to the existing data collection for the ORR-6 Performance Report forms (OMB #0970-0036, expiration December 31, 2025) with minor changes to the instructions. The minor proposed changes removed parts of the instructions that are no longer relevant due to expired program funding and clarify existing instructions. Revisions also include removal of data points from the Annual Service Plan to further reduce burden on respondents.

DATES: *Comments due* March 9, 2026.

ADDRESSES: The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202602-0970-001. You can also obtain copies of the proposed collection of information by emailing infocollection@acf.hhs.gov. Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The ORR-6 is designed to satisfy the statutory requirements of the Immigration and Nationality Act (INA). Specifically, section 412(a)(7) of INA (8 U.S.C. 1522(a)(7)) requires that

the Director monitor refugee resettlement assistance, including collecting data on the services provided and the results achieved. Data elements include output data that measures services provided by programs for school-aged youth, elderly populations, and for overall health promotion. The data collected will inform evidence-based policymaking and program design.

The ORR-6 is an OMB-approved form under the Paperwork Reduction Act (PRA). ORR proposes to extend OMB approval for the ORR-6 with minor changes to the instructions and reduction of reporting burden through removal of data points from the Annual Service Plan. ORR staff and ORR funding recipients will benefit from accurate and clear instructions that support current reporting requirements.

Respondents: States, Replacement Designees, and the District of Columbia.

Annual Burden Estimates: ACF estimates the proposed changes reduce response burden from 15 to 13 hours.

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
ORR-6 Performance Report	70	2	13	1,820

Authority: 8 U.S.C. 1522(b)(7).

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2026-02315 Filed 2-5-26; 8:45 am]

BILLING CODE 4184-89-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-D-0207]

E22 General Considerations for Patient Preference Studies; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a draft guidance for industry entitled “E22 General Considerations for Patient Preference Studies.” The draft guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). When finalized, this guidance will provide general principles for the use, design, conduct, analysis, and submission of patient preference studies (PPS) aimed at informing drug development, regulatory submission and evaluation, drug approvals, and maintenance of such approvals.

DATES: Submit either electronic or written comments on the draft guidance by April 7, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are

solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2026-D-0207 for “E22 General Considerations for Patient Preference Studies.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in

its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)). Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Ethan Gabbour, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993-0002, Ethan.Gabbour@fda.hhs.gov; or Phillip Kurs, Center for Biologics Evaluation and Research, Food and Drug Administration, 240-402-7911.

Regarding the ICH: Brooke Dal Santo, Center for Drug Evaluation and

Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6304, Silver Spring, MD 20993-0002, 301-348-1967, Brooke.DalSanto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “E22 General Considerations for Patient Preference Studies.” The draft guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are the FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to <https://www.ich.org/>).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA’s guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency’s current thinking on a topic and should be viewed only as recommendations,

unless specific regulatory or statutory requirements are cited.

In November 2025, the ICH Assembly endorsed the draft guideline entitled “E22 General Considerations for Patient Preference Studies” and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Efficacy Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Efficacy Expert Working Group.

The draft guidance outlines general harmonized considerations about the use, design, conduct, analysis, and submission of PPS aimed at informing drug development, regulatory submission and evaluation, drug approvals and maintenance of such approvals.

While the information provided by PPS does not replace the information provided by efficacy and safety studies, the PPS information may be useful across the different phases of drug development, pre- and post-marketing, and may be considered together with the efficacy and safety information in the benefit-risk assessment of drugs and related regulatory decisions.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA’s good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on “E22 General Considerations for Patient Preference Studies.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.regulations.gov>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information->

[biologics/biologics-guidances](https://www.fda.gov/regulatory-information/search-fda-guidance-documents), or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Lowell M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-02324 Filed 2-5-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-N-0232]

Medical Devices; Exemptions From Premarket Notification: Class II Devices; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) has identified a list of class II devices that, when finalized, will be exempt from premarket notification requirements, subject to certain limitations. FDA is publishing this notice and requesting public comment in accordance with procedures established by the 21st Century Cures Act. This notice does not represent FDA’s final determination with respect to the devices included in this document. FDA will review any comments submitted within the 60-day comment period and will consider whether the list of class II devices should be modified prior to publication of its final determination in the **Federal Register**.

DATES: Submit either electronic or written comments on the notice by April 7, 2026.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 7, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2026-N-0232 for "Medical Devices; Exemptions from Premarket Notification: Class II Devices; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents, or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Jismi Johnson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1528, Silver Spring, MD 20993, 301-796-6424, Jismi.Johnson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended, establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) establishes three classes of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three classes of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Section 513(a)(1) of the FD&C Act defines the three classes of devices. Class I devices are those devices for which the general controls of the FD&C Act (controls authorized by or under section 501, 502, 510, 516, 518, 519, or 520 (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, or 360j) or any combination of such sections) are sufficient to provide reasonable assurance of safety and effectiveness of the device; or those devices for which insufficient information exists to determine that general controls are sufficient to provide reasonable assurance of safety and

effectiveness or to establish special controls to provide such assurance, but because the devices are not purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, and do not present a potential unreasonable risk of illness or injury, are to be regulated by general controls (section 513(a)(1)(A) of the FD&C Act).

Class II devices are those devices for which general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including the issuance of performance standards, post-market surveillance, patient registries, development and dissemination of guidelines, recommendations, and other appropriate actions FDA (the Agency or we) deems necessary to provide such assurance (section 513(a)(1)(B) of the FD&C Act).

Class III devices are those devices for which insufficient information exists to determine that general controls and special controls would provide a reasonable assurance of safety and effectiveness, and are purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or present a potential unreasonable risk of illness or injury (section 513(a)(1)(C) of the FD&C Act).

Under section 510(k) of the FD&C Act and FDA's implementing regulations in part 807 of Title 21 of the Code of Federal Regulations (CFR), subpart E, persons who propose to begin the introduction or delivery for introduction into interstate commerce for commercial distribution of a device intended for human use are required to submit a premarket notification (510(k)) to FDA. The device may not be marketed until FDA finds it "substantially equivalent" within the meaning of section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a legally marketed device that does not require premarket approval.

The 21st Century Cures Act (Cures Act) (Pub. L. 114-255) was signed into law on December 13, 2016. Section 3054 of the Cures Act amended section 510(m) of the FD&C Act. As amended, section 510(m)(1)(A) of the FD&C Act requires that within 90 days of the date of enactment of the Cures Act, and at least once every 5 years thereafter (as FDA determines appropriate), FDA publish in the **Federal Register** a notice containing a list of each type of class II device that FDA determines no longer

requires a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Additionally, FDA must provide at least a 60-day comment period for any such notice published under section 510(m)(1)(A) of the FD&C Act. FDA published its initial notice under section 510(m)(1)(A) of the FD&C Act in the **Federal Register** of March 14, 2017 (82 FR 13609), and issued its final determination of exemption of the devices in such notice in accordance with section 510(m)(1)(B) of the FD&C Act in the **Federal Register** of July 11, 2017 (82 FR 31976).

FDA is now publishing this notice and requesting public comment in accordance with section 510(m)(1)(A) of the FD&C Act. In a future action, and after considering comments, FDA intends to amend the codified language for each listed regulation to reflect FDA's final determination with respect to each exempt class II device type. Such final action will decrease regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with Federal regulation. Specifically, regulated industry will no longer have to invest time and resources in 510(k) submissions for devices exempt from such requirements.

II. Factors FDA May Consider for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the January 21, 1998, **Federal Register** notice (63 FR 3142) and subsequently in the guidance the Agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff" ("Class II 510(k) Exemption Guidance") (Ref. 1). Accordingly, FDA generally considers the following factors to determine whether premarket notification is necessary or if an exemption would be appropriate for class II devices: (1) the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device; (2) characteristics of the device necessary for its safe and effective performance are well established; (3) changes in the device that could affect safety and effectiveness will either (a) be readily

detectable by users by visual examination or other means such as routine testing, before causing harm, or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (4) any changes to the device would not be likely to result in a change in the device's classification. FDA may also consider that, even when exempting devices from the 510(k) requirements, these devices would still be subject to the limitations of exemptions. FDA's determination that premarket notification is not necessary to provide a reasonable assurance of safety and effectiveness for class II devices is based, in part, on the Agency's knowledge of the devices, including past experience and relevant reports or studies on device performance (as appropriate), the applicability of general and special controls, and the Agency's ability to limit an exemption, as discussed in section III of this notice.

III. Limitations of Exemptions

A. General Limitations of Exemptions

FDA's proposal to exempt the class II devices listed in table 1 and table 2 from premarket notification requirements applies only to those devices that have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type. After the 60-day comment period and FDA's issuance of a notice announcing FDA's final determination, a manufacturer of a device listed in this document will still be required to submit a premarket notification to FDA before introducing a device or delivering it for introduction into interstate commerce for commercial distribution when the device meets any of the limitations of exemptions described in 21 CFR parts 862–892 in the section of each part entitled "Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act)."¹

B. Partial Limitations of Exemptions

In addition to the general limitations described in section III.A of this notice, partial limitations may limit an exemption from premarket notification requirements to devices that satisfy certain conditions within a device type when the Agency determines that the factors described in the Class II 510(k) Exemption Guidance (Ref. 1) do not

weigh in favor of exemption for all devices within a generic type of device. Where a partial limitation of exemption has been identified in this notice (see table 2), FDA has determined that premarket notification is necessary to provide a reasonable assurance of safety and effectiveness for devices that fall outside of the limitations.

In table 2, for example, FDA is listing a proposed exemption from 510(k) requirements for uterine tenaculum (21 CFR 884.4530, product code HDC²) but is limiting the proposed exemption to manual mechanical devices. The proposed exemption thus excludes devices that are powered. Whereas the characteristics of a manual mechanical uterine tenaculum necessary for the safe and effective performance of the device are well-established, a powered uterine tenaculum has a relatively complex design that carries additional risks beyond those of a manual mechanical device, and FDA therefore considers premarket notification requirements for a powered device, such as a vacuum-based device, to be necessary to provide a reasonable assurance of safety and effectiveness. If this proposed exemption is finalized, a uterine tenaculum that meets the partial limitation of exemptions and the general limitations of exemptions in 21 CFR 884.9 would be exempt from the 510(k) requirements and would be identified under a new product code. However, a uterine tenaculum that does not meet the limitations of exemptions would remain subject to 510(k) requirements and would remain under the product code HDC.

IV. List of Class II Devices

FDA has determined that premarket notification is not necessary to provide a reasonable assurance of safety and effectiveness for the class II devices listed in table 1 and table 2 of this notice.

In table 1, FDA is identifying the following list of class II devices that, if finalized, would no longer require premarket notification under section 510(k) of the FD&C Act, subject to the general limitations of exemptions described in section III.A of this notice:

² FDA's Center for Devices and Radiological Health (CDRH) uses product codes to help categorize and ensure consistent regulation of medical devices. A product code consists of three characters that are assigned at the time a product code is generated and is unique to a product type. The three characters carry no other significance and are not an abbreviation.

¹ See 21 CFR 862.9, 864.9, 866.9, 868.9, 870.9, 872.9, 874.9, 876.9, 878.9, 880.9, 882.9, 884.9, 886.9, 888.9, 890.9, and 892.9.

TABLE 1—PROPOSED EXEMPT CLASS II DEVICES SUBJECT TO GENERAL LIMITATIONS

21 CFR section	Device type	Product code
870.1120	Blood pressure cuff	DXQ
872.3920	Teeth, porcelain	ELL
872.6660	Powder, porcelain	EIH
876.1500	Image, illumination, fiberoptic, for endoscope	FFS
876.1500	Jelly, lubricating, for transurethral surgical instrument	FHX
876.4300	System, alarm, electrosurgical	FFI
876.5360	Laparoscopic accessories, esophageal sizing	QJN
878.4370	Dental barriers and sleeves	PEM
884.4530	Forceps, surgical, gynecological	HCZ
886.1640	Preamplifier, AC-powered, ophthalmic	HLT
886.1640	Preamplifier, battery-powered, ophthalmic	HLW
888.4515	Manual instruments designed for use with total disc replacement devices	QLQ
888.4520	Manual instruments designed for use with non-fusion spinous process spacer devices	QLR

In table 2, FDA is identifying the following list of class II devices that, if finalized, would no longer require premarket notification under section 510(k) of the FD&C Act, subject to the proposed partial limitations of

exemptions as well as the general limitations of exemptions found in §§ 862.9 to 892.9. If this list is finalized, devices listed in table 2 would be exempt only if they meet the proposed partial limitations of exemptions

specified in table 2 and the corresponding general limitations of exemptions described in section III.A of this notice.

TABLE 2—PROPOSED EXEMPT CLASS II DEVICES SUBJECT TO GENERAL LIMITATIONS AND PARTIAL LIMITATIONS

21 CFR section	Device type	Product code	Partial limitations
870.1875	Stethoscope, electronic	DQD	Exemption is limited to devices that meet the following conditions: 1. Stethoscopes without algorithms; 2. Stethoscopes without diagnostic outputs, such as murmur detection, arrhythmias, or heart failure; and 3. Stethoscopes solely intended for sound amplification, filtering, and transferring sounds.
870.5800	Sleeve, limb, compressible	JOW	Exemption is limited to devices that meet the following conditions: 1. Device is intended for prescription use in adults with intact skin; 2. Device is indicated only for deep vein thrombosis (DVT) prophylaxis and for the treatment of lymphedema, venous stasis ulcers, venous insufficiency, and/or peripheral edema; 3. Device is a garment only and intended for single patient use on thigh, calf, ankle and/or foot; 4. Device is pneumatic with operating pressures between 20mmHg and 120mmHg and inflation time between 5s to 30s and deflation time between 30s to 120s; and 5. Device is not intended to heat or cool a patient.
878.4810	Light based over the counter wrinkle reduction.	OHS	Exemption is limited to devices that meet the following conditions: 1. Device emitters have a maximum output that cannot produce intensities at the skin surface that exceed 150 mW/cm ² and 180 J/cm ² per treatment; and 2. Device uses only yellow, red, or amber, or a combination of yellow, red, or amber with infrared color (from 800nm to 900nm) of light.
878.4810	Light based over-the-counter hair removal.	OHT	Exemption is limited to devices that meet the following conditions: 1. Device emitters have a pulse width ≥0.5 milliseconds, spot size ≤7 cm ² , and fluence ≤10 J/cm ² ; 2. Device uses Intense Pulsed Light (IPL) with a wavelength range of 470nm–1200nm; and 3. Device is intended for use on the legs, arms, back, chest, upper lip, and/or armpit.
880.5570	Container, sharps	MMK	Exemption is limited to devices that meet the following conditions: 1. Device is intended for single use; 2. Device is intended to be used in a healthcare setting; 3. Device is intended to contain only sharps for disposal; 4. Device does not include software or electronic components; and 5. Appropriate analysis and non-clinical testing (such as that outlined in the currently FDA-recognized editions of ISO 23908, “Sharps injury protection—Requirements and test methods—Sharps protection features for single-use hypodermic needles, introducers for catheters and needles used for blood sampling,” and ISO 23907–1, “Sharps injury protection—Requirements and test methods—Part 1: Single-use sharps containers”) must validate specifications and performance of the device.

TABLE 2—PROPOSED EXEMPT CLASS II DEVICES SUBJECT TO GENERAL LIMITATIONS AND PARTIAL LIMITATIONS—Continued

21 CFR section	Device type	Product code	Partial limitations
884.4530	Tenaculum, uterine	HDC	Exemption is limited to manual mechanical devices. Exemption is limited to devices that meet the following conditions: 1. Device is a tabletop breast pump that has a vacuum pressure <250 mmHg, uses AC/DC power only, and does not include a battery; and 2. Device does not utilize internet, wireless connection, communication ports (e.g., USB) capable of updating software or transmitting information, or a mobile application.
884.5160	Pump, breast, powered	HGX	
884.5300	Lubricant, personal	NUC	Exemption is limited to devices that meet the following conditions: 1. Device is made entirely of silicone (i.e., dimethicone, dimethiconol, cyclopentasiloxane) with no additional ingredients; 2. Water activity is <0.3 Aw per USP<1112> (Application of Water Activity Determination to Nonsterile Pharmaceutical Products); and 3. Device is not intended for treatment of medical conditions or specific patient populations.
884.6170	System, water, reproduction, assisted, and purification.	MTW	Exemption is limited to assisted reproduction water and does not include water purification systems.
890.5500	Laser, comb, hair	OAP	Exemption is limited to devices that meet the following conditions: 1. Device emitters have a maximum output that cannot produce intensities at the scalp surface that exceed 68 J/cm ² ; and 2. Device only uses red light.
890.5650	Massager, powered inflatable tube.	IRP	Exemption is limited to devices that meet the following conditions: 1. Device is pneumatic with operating pressures between 0 mmHg and 200 mmHg positive pressures; 2. Device is indicated for adults in good health, for the temporary relief of minor muscle aches and/or pains, for temporary increase in circulation to the treated areas, and/or to simulate kneading and stroking of tissues; 3. Device is not intended for use on neck and/or head; 4. If device compresses thoracic (chest, back) and/or abdominal areas, the device does not exceed pressure of 120 mmHg; 5. Device is not intended to heat or cool a patient; and 6. Device is not intended to be used for direct skin contact.

If the proposed exemptions for the device types listed in table 2 are finalized, FDA will assign new product codes to the device types that will be exempt subject to the corresponding partial limitations of exemptions in order to ensure that these devices can be identified distinctly from devices that do not fall within the partial limitations of exemptions (which will continue to be assigned to the existing product code). Exempt and non-exempt devices within a device type will therefore have different product codes.

V. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at <https://www.regulations.gov>. Although FDA verified the website address in this document, please note that websites are subject to change over time.

1. FDA Guidance, "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and

CDRH Staff," February 19, 1998, available at <https://www.fda.gov/media/72685/download>.

Lowell M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02377 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–1655]

Paul Zachary Lamberty: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debaring Paul Zachary Lamberty for a period of 10 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Lamberty was

convicted of two felonies under Federal law; one felony count for conspiracy and one felony count for introduction of misbranded drugs with intent to defraud and mislead. The factual basis supporting Mr. Lamberty's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Lamberty was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of September 8, 2025 (30 days after receipt of the notice), Mr. Lamberty had not responded. Mr. Lamberty's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable February 6, 2026.

ADDRESSES: Any application by Mr. Lamberty for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted at any time as follows:

Electronic Submissions

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the

instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All applications must include the Docket No. FDA-2025-N-1655. Received applications will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions*—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on

<https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug Administration, 240-402-8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On May 30, 2025, Mr. Lamberty was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for District of Massachusetts when the court accepted his plea of guilty and entered judgment against him for the felony offenses of one felony count for conspiracy in violation of 18 U.S.C. 371 and one felony count for introduction of misbranded drugs with intent to defraud and mislead in violation of 21 U.S.C. 331(a) (section 301(a) of the FD&C Act). The underlying facts supporting the conviction are as follows:

As contained in the Information, and in the Plea Agreement from his case, from on or about February 2017, through on or about August 2021, Mr. Lamberty operated the websites, www.encern.com and www.ohmod.com. Through these websites Mr. Lamberty advertised and sold etizolam. Etizolam is a drug known as a thienodiazepine. Thienodiazepines are a class of drug chemically related to benzodiazepines.

Benzodiazepines are a class of drug that produces central nervous system depression. In the United States, practitioners can prescribe FDA approved products containing benzodiazepines to treat insomnia and anxiety. However, benzodiazepines carry a risk of dependency, toxicity, and even fatal overdose particularly when combined with other central nervous system depressants. Thienodiazepines carry similar health risks as benzodiazepines. FDA has not approved any drugs containing etizolam. The websites Mr. Lamberty operated included disclaimers stating the products he was selling were for "For Research Purposes Only" and "Not for Human Use." However, despite these disclaimers, Mr. Lamberty knew and intended that the products he sold would be used by humans as drugs intended to affect the structure or any function of the human body. Mr. Lamberty obtained the etizolam he sold from suppliers in China. Mr. Lamberty mislabeled the etizolam before and during importation into the United States to avoid detection by Customs and Border Protection (CBP) and he knew he imported the etizolam contrary to the law. In addition, Mr. Lamberty received the etizolam he purchased from China at multiple addresses and post office boxes as a tactic to avoid CBP detection. After Mr. Lamberty received the etizolam he imported, he sold his drug product to customers in the United States who had ordered them on the websites he operated. Mr. Lamberty sent the etizolam to his customers with false labeling stating that the product was sold "For Research Purposes Only" and "Not for Human Consumption." Despite the disclaimers on the products themselves, Mr. Lamberty knew the etizolam products he sold would be used by humans as drugs. The etizolam products Mr. Lamberty sold through his website were misbranded because their labeling was false and misleading and because their labeling failed to bear adequate directions for use.

FDA sent Mr. Lamberty, by certified mail, on July 29, 2025, a notice proposing to debar him for a 10-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Lamberty's felony conviction under Federal law for conspiracy in violation of 18 U.S.C. 371 and one felony count for introduction of misbranded drugs with intent to defraud and mislead in violation of 21 U.S.C. 331(a) (section 301(a) of the FD&C Act), was for conduct relating to the

importation of any drug or controlled substance into the United States because Mr. Lamberty illegally imported the unapproved drug etizolam and sold it to customers in the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that the Agency considered applicable to Mr. Lamberty's offense and concluded that the offense warranted the imposition of a 10-year period of debarment.

The proposal informed Mr. Lamberty of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Lamberty received the proposal and notice of opportunity for a hearing on August 8, 2025. Mr. Lamberty failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Director, Division of Enforcement, finds that Mr. Paul Zachary Lamberty has been convicted of felonies under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offenses should be accorded a debarment period of 10 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Lamberty is debarred for a period of 10 years from importing or offering for import any drug into the United States, effective (see DATES). Pursuant to section 301(cc) of the FD&C Act, the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Lamberty is a prohibited act.

Lowell M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-02337 Filed 2-5-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-2033]

Agency Information Collection Activities; Proposed Collection; Comment Request; Expedited Programs for Serious Conditions—Accelerated Approval of Drugs and Biologics

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection relating to the draft guidance, "Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics."

DATES: Either electronic or written comments on the collection of information must be submitted by April 7, 2026.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 7, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-D-2033 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Expedited Programs for Serious Conditions—Accelerated Approval of Drugs and Biologics." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Anne Taylor, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 240-402-5683, PRABranch@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and

assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Expedited Programs for Serious Conditions—Accelerated Approval of Drugs and Biologics

OMB Control Number 0910-0765—Revision

This information collection supports the implementation of section 506 of the FD&C Act (21 U.S.C. 356) and agency guidance. In the Consolidated Appropriations Act, 2023 (CAA), Congress amended section 506(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 356(c)), to provide FDA additional authorities and to impose on FDA additional obligations regarding the accelerated approval pathway.

In the **Federal Register** of December 6, 2024 (89 FR 97011), FDA announced the availability of a draft guidance for industry entitled “Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics.” The guidance is available from our website at <https://www.fda.gov/media/184120/download>. The guidance provides information on FDA’s policies and procedures for the accelerated approval program. FDA issued this guidance to satisfy a mandate under the CAA. This guidance discusses which products may be candidates for accelerated approval, the standards for granting accelerated approval, and the procedures for withdrawing accelerated approval. Statutory requirements in section 506(c) of the FD&C Act are discussed in the draft guidance document, including the recently added procedures for the expedited withdrawal of approval of a product approved under accelerated approval (guidance Section V).

The expedited procedures for withdrawing accelerated approval require FDA to provide the sponsor with (1) due notice, (2) an explanation for the proposed withdrawal, (3) an opportunity to meet with the Commissioner or a designee of the Commissioner (Commissioner/designee), (4) an opportunity for written appeal to the Commissioner, or to a designee who has not participated in the proposed withdrawal of approval and is not a subordinate of an individual (other than the Commissioner) who participated in such proposed withdrawal, and (5) the opportunity for

an advisory committee meeting on issues related to the proposed withdrawal if requested by the sponsor and an advisory committee has not previously advised FDA on such issues with respect to the withdrawal of the product prior to the sponsor’s request. In addition, FDA must provide an opportunity for public comment on the proposal to withdraw approval and publish on FDA’s website a summary of public comments received and FDA’s response to such comments. We anticipate there will be information collection burdens associated with participating in an advisory committee meeting or submitting a written appeal.

If FDA is considering whether to propose withdrawing approval of a drug that has been granted accelerated approval, in general, FDA should convene an advisory committee to request the committee’s advice on whether one or more of the criteria for withdrawal in section 506(c) of the FD&C Act has been met and any other issues that may be relevant to whether approval should be withdrawn. The guidance recommends that a sponsor submit, if it had not already, any data and evidence and any objections to withdrawal that the sponsor considers relevant so that they may be considered at this stage (guidance Section V.C). Sponsors should follow the submission requirements specified in the meeting notice for the advisory committee using the appropriate docket number, or submit via email or postal mail if specified in the **Federal Register** notice.

In the event that FDA utilizes the expedited procedures for withdrawing accelerated approval and the sponsor seeks to submit a written appeal of the proposed withdrawal of approval, the guidance recommends that the sponsor should present its objections to the proposal to withdraw approval and may submit any supporting data, information, or evidence on which the sponsor relies for its appeal. With respect to such information, the guidance notes that the sponsor may seek to incorporate by reference any data, information, or evidence submitted to the new drug application (NDA) or biologics license application (BLA) file or presented in briefing materials to an advisory committee convened to provide advice to the Agency on whether to withdraw the accelerated approval (guidance Section V.C.3.a). The appeal and any other response, including supporting materials, should be submitted to the docket opened for the written notice, with a copy provided to the Center. Additional instructions, for example, on submitting redacted materials, will

come from the Commissioner/designee should the sponsor elect to pursue its opportunity for an appeal or meeting.

The information that respondents submit to us in preparation for an Advisory Committee meeting and in a written appeal is needed to allow us to efficiently administer the expedited withdrawal procedures in section 506(c)(3) of the FD&C Act and to support our efforts to protect the health of users of drugs approved under

accelerated approval. We use the information collected in preparation for an Advisory Committee meeting to facilitate discussion among the advisory committee members. We use the information collected in a written appeal to evaluate whether the Center's proposal to withdraw approval should be finalized. We are requesting approval to revise the statutory authority reference in approved OMB control number 0910–0765 to include section

3210 of the CAA and to revise the burden estimates approved in that control number to include the following burden hours.

Description of Respondents: Respondents to this information collection are sponsors of drugs and biologics that have been granted accelerated approval designations.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Advisory Committee meeting; Draft Guidance, section V.B	2	1	2	400	800
Appeal to the Commissioner; Draft Guidance, section V.C.3.a	1	1	1	40	40
Total			3		840

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimates of the number of respondents and the average burden per response on our experience with Advisory Committee meetings and written appeals to the Commissioner. We estimate that, on average over the next three years, two sponsors will request Advisory Committees per year, across the entire Agency. As discussed, the sponsors will submit data and evidence and any objections to withdrawal that the sponsor considers relevant. Part of the information submitted will have been developed for the NDA or BLA file. Based on our experience, we estimate that it will take approximately 400 hours for the sponsor to prepare the submission for the Advisory Committee.

We estimate that, on average over the next three years, one or fewer sponsors will submit a written appeal of the proposed withdrawal of approval, across the entire Agency. As discussed, we expect that each sponsor will present its objections to the proposal to withdraw approval and will submit any supporting data, information, or evidence on which the sponsor relies for its appeal. Part of the information submitted will have been developed for the NDA or BLA file or presented in briefing materials to an advisory committee. Based on our experience, we estimate that it will take approximately 40 hours for the sponsor to prepare the submission for the written appeal.

The draft guidance “Expedited Program for Serious Conditions—Accelerated Approval of Drugs and Biologics” also refers to previously approved FDA collections of information. The collections of

information in 21 CFR parts 10, 12–16, and 19 relating to administrative practice and procedures have been approved under OMB control number 0910–0191. The collections of information in 21 CFR part 312 relating to clinical trials associated with accelerated approval pathways have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 relating to the submission of new drug applications, including accelerated approval of new drugs for serious or life-threatening conditions, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 relating to the submission of biologics license applications have been approved under OMB control number 0910–0338.

In addition, section 3210 of the CAA provides statutory authority to help ensure timely completion of confirmatory trials of accelerated approval products, including that FDA may require as appropriate, a confirmatory study or studies to be underway prior to approval or within a specified time period after the date of approval of the product. The CAA also requires sponsors to submit postmarketing reports to FDA on the progress of required confirmatory trials approximately every 180 days. The draft guidance, “Accelerated Approval and Considerations for Determining Whether a Confirmatory Trial is Underway” (January 2025) describes FDA's policies for implementing this statutory authority. As described in the Notice of Availability for that guidance, published January 7, 2025 (90 FR 1171), FDA will

use the reports to monitor the progress of confirmatory trials and take action, if necessary.

With regard to information collection relating to postmarketing study commitments, we reviewed the statutory authority granted by section 3210 of the CAA as well as our existing statutory authority and regulations. Section 506B of the FD&C Act (21 U.S.C. 356b), and implementing regulations in §§ 312.20, 314.81 and 601.70 (21 CFR 312.20, 314.81 and 601.70), provide for the submission of postmarket study reports, requiring sponsors of approved drugs and biological products to report to FDA on the progress of their postmarketing study commitments, including reports on required studies, clinical trials, and agreed upon commitments. We tentatively concluded that the change in our statutory authority with regard to postmarketing study commitments adds no further information collection requirements and imposes no further burden beyond what is already required in our statutes and regulations and included in the approved ICRs for reporting the status of postmarketing study commitments (90 FR 1171, at 1173).

Our estimated burden for the revised information collection reflects an overall increase of 840 hours and a corresponding increase of three responses, which we attribute to the proposed reporting provisions in the draft guidance “Expedited Program for

Serious Conditions—Accelerated Approval of Drugs and Biologics.”

Brian Fahey,

Associate Commissioner for Legislation.

[FR Doc. 2026–02386 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2025–E–0152; FDA–2025–E–0153; and FDA–2025–E–0154]

Determination of Regulatory Review Period for Purposes of Patent Extension; COBENFY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for COBENFY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 7, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 5, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 7, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the

instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2025–E–0152; FDA–2025–E–0153; and FDA–2025–E–0154 for “Determination of Regulatory Review Period for Purposes of Patent Extension; COBENFY.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including

the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical

investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, COBENFY (xanomeline tartrate and trospium chloride). COBENFY is indicated for the treatment of schizophrenia in adults. Subsequent to this approval, the USPTO received patent term restoration applications for COBENFY (U.S. Patent Nos. 10,238,643; 10,369,143; 10,369,144) from PureTech Health LLC and the USPTO requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated August 26, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of COBENFY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for COBENFY is 11,751 days. Of this time, 11,384 days occurred during the testing phase of the regulatory review period, while 367 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 27, 1992. PureTech Health LLC claims that August 19, 2016, is the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 27, 1992, which was 30 days after FDA receipt of an earlier IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 26, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for

COBENFY (NDA 216158) was initially submitted on September 26, 2023.

3. *The date the application was approved:* September 26, 2024. PureTech Health LLC claims that the new drug application (NDA) for COBENFY (NDA 216158) was approved on September 27, 2024. However, FDA records indicate that NDA 216158 was approved on September 26, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,124 or 1,191 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Brian Fahey,

Associate Commissioner for Legislation.

[FR Doc. 2026–02388 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–1956]

Matthew Teltser: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarment Matthew Teltser from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Matthew Teltser was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. Dr. Teltser was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why he should not be debarred within the timeframe prescribed by regulation. As of November 14, 2025 (more than 30 days after receipt of the notice), Dr. Teltser has not responded. Dr. Teltser's failure to respond and request a hearing constitutes a waiver of Dr. Teltser's right to a hearing concerning this matter.

DATES: This order is applicable February 6, 2026.

ADDRESSES: Any application by Dr. Teltser for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted at any time as follows:

Electronic Submissions

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All applications must include the Docket No. FDA-2025-N-1956. Received applications will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061,

Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug Administration, 240-402-8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act. On June 10, 2025, Dr. Teltser was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the Southern District of Florida, Fort Lauderdale Division, when the court accepted his plea of guilty and entered judgment against him for the offense of making a false statement in violation of 18 U.S.C. 1001(a)(2). The underlying facts supporting the conviction are as follows:

As contained in the Information, Plea Agreement, and Factual Proffer in support of Dr. Teltser’s guilty plea, Dr. Teltser was a licensed medical doctor who served as the clinical investigator at A&R Research Group LLC (A&R), a medical research clinic that conducted clinical trials on behalf of drug trial sponsors. Between at least in or around January 2019 and continuing through at least in or around January 2020, Dr. Teltser conducted two clinical research trials at A&R on behalf of a drug sponsor as the clinical investigator. The two clinical research trials concerned investigational drugs intended to treat human subjects with moderate to severe asthma and mild to moderate asthma (collectively, “the asthma trials”).

As the clinical investigator, Dr. Teltser was responsible for, among other things, personally overseeing the conduct of the studies and study staff, performing physical examinations on study subjects, reviewing lab results and echocardiograms, and preparing and maintaining accurate medical records, also referred to as case histories.

Prior to beginning the clinical trials, Dr. Teltser and A&R entered into a Clinical Trial Agreement for each of the asthma trials with the contract research

organization which was acting on behalf of the drug sponsor. By signing the Clinical Trial Agreements, Dr. Teltser knew he was required, among other things, to follow the study protocol and applicable Federal regulations. Dr. Teltser signed a Form FDA 1572, Statement of Investigator, for at least one of the asthma trials. By signing the Form FDA 1572, Statement of Investigator, Dr. Teltser agreed to (1) conduct the trial according to the study protocol and in compliance with all applicable Federal regulations; and (2) personally conduct and supervise the trial.

Dr. Teltser’s responsibilities included monitoring the safety and well-being of subjects in the clinical trials, performing physical examinations on subjects, and reviewing and maintaining the case histories. The study protocols for the asthma trials required subjects to meet certain eligibility criteria to qualify for and be enrolled in the trials. Once enrolled in the asthma trials, the study protocols required the subjects to submit to routine clinical procedures and safety measurements, such as physical examinations and check of vital signs, as well as study specific assessments, such as electrocardiogram readings, pulmonary functions tests, and the drawing of blood samples for hematology and clinical chemistry.

Between approximately January 23, 2020, and January 31, 2020, FDA conducted a for-cause inspection at A&R. As part of the inspection, Dr. Teltser was required to make records related to the asthma trials available to the FDA investigator. The FDA investigator interviewed Dr. Teltser as part of the inspection on or about January 31, 2020. During the interview, Dr. Teltser knowingly and falsely stated to the FDA investigator that he had been present at every subject visit during the asthma trials. In fact, Dr. Teltser had not been present at every subject visit in the asthma trials.

As a result of this conviction, FDA sent Dr. Teltser, by certified mail, on September 2, 2025, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Dr. Teltser was convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product. The proposal informed Dr. Teltser of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of

receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and a waiver of any contentions concerning this action. Dr. Teltser received the proposal and notice of opportunity for a hearing on September 8, 2025. Dr. Teltser failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Director, Division of Enforcement, finds that Dr. Matthew Teltser has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

As a result of the foregoing finding, Dr. Teltser is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and 306(c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Dr. Teltser during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Teltser provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Dr. Teltser during his period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of sections 306 and 307 of the FD&C Act, a “drug product” is defined as a “drug subject to regulation under section 505, 512, or 802 of the FD&C Act [(21 U.S.C. 355, 360b, 382)] or under section 351 of the Public Health Service Act [(42

U.S.C. 262)]” (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Lowell M. Zeta,

Acting Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–02349 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–3535 and FDA–2024–E–3536]

Determination of Regulatory Review Period for Purposes of Patent Extension; AURORA EV–ICD

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for AURORA EV–ICD and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 6, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such

as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2024–E–3535; and FDA–2024–E–3536 for “Determination of Regulatory Review Period for Purposes of Patent Extension; AURORA EV–ICD.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that

may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device, AURORA EV–ICD. AURORA EV–ICD is indicated for the automated treatment of patients who have experienced, or are at significant risk of developing, life-threatening ventricular tachyarrhythmias through the delivery of antitachycardia pacing, cardioversion, and defibrillation therapies. Medical conditions that may indicate a patient for an EV–ICD for primary or secondary prevention of sudden cardiac death due to life-threatening ventricular tachyarrhythmias include:

- Previous ventricular tachyarrhythmias
- Coronary disease with left ventricular dysfunction
- Cardiomyopathy
- Inherited primary arrhythmia syndromes
- Congenital heart disease

Subsequent to this approval, the USPTO received patent term restoration applications for AURORA EV–ICD (U.S. Patent Nos. 10,471,267; and 11,534,603) from Medtronic, Inc., and the USPTO requested FDA’s assistance in determining these patents’ eligibility for patent term restoration. In a letter dated June 27, 2025, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of AURORA EV–ICD represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for AURORA EV–ICD is 1,521 days. Of this time, 1,086 days occurred during the testing phase of the regulatory review period, while 435 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective:* August 23, 2019. FDA has verified the applicant’s claim that the date the investigational device

exemption (IDE) required under section 520(g) of the act for human tests to begin became effective August 23, 2019.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* August 12, 2022. FDA has verified the applicant’s claim that the premarket approval application (PMA) for AURORA EV–ICD (PMA P220012) was initially submitted August 12, 2022.

3. *The date the application was approved:* October 20, 2023. FDA has verified the applicant’s claim that PMA P220012 was approved on October 20, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 297 or 868 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Brian Fahey,

Associate Commissioner for Legislation.

[FR Doc. 2026–02383 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–3539]

Determination of Regulatory Review Period for Purposes of Patent Extension; BEQVEZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for BEQVEZ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by April 7, 2026. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by August 5, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 7, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–E–3539 for “Determination of Regulatory Review Period for Purposes of Patent Extension; BEQVEZ.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this

information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension

that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product BEQVEZ (fidanacogene elaparovect-dzkt). BEQVEZ is indicated for the treatment of adults with moderate to severe hemophilia B (congenital factor IX deficiency) who:

- Currently use factor IX prophylaxis therapy, or
- Have current or historical life-threatening hemorrhage, or
- Have repeated, serious spontaneous bleeding episodes, and,
- Do not have neutralizing antibodies to adeno-associated virus serotype Rh74var (AAVRh74var) capsid as detected by an FDA-approved test.

Subsequent to this approval, the USPTO received a patent term restoration application for BEQVEZ (U.S. Patent No. 10,799,566) from Children's Hospital of Philadelphia, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 12, 2025, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of BEQVEZ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for BEQVEZ is 3,277 days. Of this time, 2,913 days occurred during the testing phase of the regulatory review period, while 364 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 8, 2015. Children's Hospital of Philadelphia claims that May 10, 2015, is the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 8, 2015, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* April 28, 2023. FDA has verified the applicant's claim that the biologics license application (BLA) for BEQVEZ (BLA 125786) was initially submitted on April 28, 2023.

3. *The date the application was approved:* April 25, 2024. FDA has verified the applicant's claim that BLA 125786 was approved on April 25, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 671 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Brian Fahey,

Associate Commissioner for Legislation.

[FR Doc. 2026–02387 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–E–1227]

Determination of Regulatory Review Period for Purposes of Patent Extension; ALFAPUMP

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ALFAPUMP and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 7, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public; you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2025-E-1227 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ALFAPUMP.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jack Dan, Office of Regulatory Policy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device, ALFAPUMP. ALFAPUMP is indicated for single patient use only in adult patients with refractory or recurrent ascites due to liver cirrhosis. It is indicated for the removal of excess peritoneal fluid from the peritoneal cavity into the bladder, where it can be eliminated through

normal urination. Subsequent to this approval, the USPTO received a patent term restoration application for ALFAPUMP (U.S. Patent No. 9,149,613) from Sequana Medical NV, and the USPTO requested FDA’s assistance in determining this patent’s eligibility for patent term restoration. In a letter dated June 13, 2025, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of ALFAPUMP represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that the FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ALFAPUMP is 2,035 days. Of this time, 1,676 days occurred during the testing phase of the regulatory review period, while 359 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) involving this device became effective:* May 28, 2019. FDA has verified the applicant’s claim that the date the investigational device exemption (IDE) required under section 520(g) of the act for human tests to begin became effective May 28, 2019.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* December 28, 2023. FDA has verified the applicant’s claim that the premarket approval application (PMA) for ALFAPUMP (PMA P230044) was initially submitted December 28, 2023.

3. *The date the application was approved:* December 20, 2024. FDA has verified the applicant’s claim that PMA P230044 was approved on December 20, 2024.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,198 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21

CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Brian Fahey,

Associate Commissioner for Legislation.

[FR Doc. 2026–02384 Filed 2–5–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Behavioral Health Integration Evidence Based Telehealth Network Program Integration Telehealth Evidence Collection Tool, OMB No. 0906–xxxx–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than March 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:

Information Collection Request Title: Behavioral Health Integration Evidence Based Telehealth Network Program Integration Telehealth Evidence Collection Tool, OMB No. 0906–xxxx–NEW.

Abstract: HRSA is requesting OMB approval of a new information collection, the Behavioral Health Integration Evidence Based Telehealth Network Program (BHI EB–TNP) Integration Telehealth Evidence Collection Tool. Under the BHI EB–TNP, HRSA administers grants in accordance with section 330I(d)(1) of the Public Health Service Act (42 U.S.C. 254c–14(d)(1)). The purpose of the BHI EB–TNP program is to integrate behavioral health services into primary care settings using telehealth technology through telehealth networks and evaluate the effectiveness of such integration. This program supports evidence-based projects that utilize telehealth technologies through telehealth networks in rural and underserved areas to: (1) improve access to integrated behavioral health services in primary care settings and (2) expand and improve the quality of health information available to health care providers by evaluating the effectiveness of integrating telebehavioral health services into primary care settings and establishing an evidence-based model that can assist health care providers.

HRSA collaborated with grantees in the development of a set of outcome measures to evaluate the effectiveness of grantees' telebehavioral services and monitor grantees' progress/effectiveness by analyzing performance reporting data. The measures address behavioral health and substance use disorder priorities and will help to assess the

effectiveness of evidence-based practices with the use of telehealth for patients, providers, and payers. The data collection instrument will include 27 total data elements addressing patient encounter information.

A 60-day notice was published in the **Federal Register** on September 23, 2025, vol. 90, No. 182; pp. 45774–75. There were no public comments, but HRSA has revised the estimated burden downward to reflect fewer likely respondents and a lower average burden per response.

Need and Proposed Use of the Information: HRSA developed the BHI EB–TNP instrument with the program's four goals in mind:

- (1) Improving access to the behavioral health services needed,
- (2) Reducing rural and underserved population practitioner isolation,
- (3) Improving health system productivity and efficiency, and
- (4) Improving patient outcomes.

HRSA worked with program grantees to develop outcome measures to evaluate and monitor the progress of the grantees in each of these categories, with specific indicators to be reported annually through a performance monitoring data collection platform/website. Measures capture awardee-level and aggregate data that illustrate the impact and scope of program funding along with assessing these efforts. The measures are intended to inform HRSA's progress toward meeting program goals, specifically improving access to telebehavioral health services that support primary care providers.

Likely Respondents: BHI EB–TNP award recipients.

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
BHI EB-TNP Outcome Measurement Report	26	1	26	66	1,716
Total	26		26		1,716

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2026-02414 Filed 2-5-26; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Advisory Council, April 9, 2026, 09:00 a.m. to April 10, 2026, 05:00 p.m., National Institute of Health, Rockledge I, Bethesda, MD 20892 which was published in the **Federal Register** on January 22, 2026, 91 FRN 2787.

The National Heart, Lung, and Blood Institute, Sleep Disorders Research Advisory Board meeting is being amended to add the registration links for each meeting date. Registration is required to attend the open portion of this meeting. To register for Day 1 April 9, 2026: 1:00 p.m. to 5:00 p.m. use the following link: <https://events.gcc.teams.microsoft.com/event/e4352ca7-12c8-47e2-9440-e1d675300cbc@14b77578-9773-42d5-8507-251ca2dc2b06> To register for Day 2 April 10, 2026: 9:30 p.m. to 2:00 p.m. use the following link: <https://events.gcc.teams.microsoft.com/event/65acb0f8-d2c3-44c1-9351-e9d359e3bd0d@14b77578-9773-42d5-8507-251ca2dc2b06>. The meeting is open to the public.

Dated: February 4, 2026.

Denise M. Santeufemio,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-02436 Filed 2-5-26; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, January 28, 2026, 09:30 a.m. to 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 15, 2025, 90 FR 58026.

This notice is being amended to change the meeting date from 1/28/2026 to 1/27/2026. The meeting is closed to the public.

Dated: January 30, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-02435 Filed 2-5-26; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics on Interspecies Microbial Interactions and Infections.

Date: February 23, 2026.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Irene Ramos Lopez, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 irene.ramoslopez@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Clinical Data Management, Analysis, Informatics and Digital Health D.

Date: February 23, 2026.

Time: 12:00 p.m. to 2:00 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: Siddhartha Shankar Roy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (706) 373-3901, royss@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Biobehavioral Medicine, Physical Activity and Supportive Care Interventions and Health Outcomes.

Date: March 10-11, 2026.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Lindsey Lee Page, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, lindsey.page@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: K-Awards.

Date: March 10-11, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Angela Monique Boutte, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594-0063, boutteam@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Translational Cancer Research SPORE P50.

Date: March 11–12, 2026.

Time: 9:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Amr M. Ghaleb, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W244, Rockville, MD 20850, (240) 276–6002, amr.ghaleb@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics: R-Awards.

Date: March 11–12, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Angela Monique Boutte, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Bethesda, MD 20892, (301) 594–0063, boutteam@csr.nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: March 11–12, 2026.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–6918, jimok.kim@nih.gov.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Translational Immuno-oncology Study Section.

Date: March 16, 2026.

Time: 8:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Maria Elena Cardenas-Corona, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–867–5309, maria.cardenas-corona@nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Mental and Behavioral Health Study Section.

Date: March 30, 2026.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Allison Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594–1814, kurtian@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 30, 2026.

Margaret N. Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–02434 Filed 2–5–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Regular Clearance for Autism Spectrum Disorder (ASD) Research Portfolio Analysis (National Institute of Mental Health)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Andrew Hooper, National Institute of Mental Health

(NIMH) Project Clearance Liaison, Science Policy and Evaluation Branch, Office of Science Policy, Planning and Communications, NIMH, Neuroscience Center, 6001 Executive Boulevard, MSC 9667, Bethesda, Maryland 20892, call (301) 480–8433 or Email your request, including your address to nimhprapubliccomments@mail.nih.gov.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on November 21st, 2025, pages 52685–52686 (Vol. 90, No. 223) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

The National Institute of Mental Health (NIMH), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIMH Office of National Autism Coordination (ONAC) Portfolio Analysis, NIMH, 0925–0682, expiration date 2/28/2026, REVISION, National Institute of Mental Health (NIMH), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a requested revision of a currently approved request (NIMH Office of Autism Research Coordination (OARC) Portfolio Analysis, 0925–0682, expiration date 2/28/2026), where the National Institute of Mental Health (NIMH) Office of National Autism Coordination (ONAC), on behalf of the Interagency Autism Coordinating Committee (IACC), plans to continue conducting comprehensive portfolio analyses of major autism spectrum disorder (ASD) research funders. The purpose of the ASD research portfolio analysis is to collect research funding data from U.S. and international ASD research funders, to assist the Interagency Autism Coordinating Committee (IACC) in fulfilling the requirements of the Autism Collaboration, Accountability, Research, Education, and Support (CARES) Act of 2024, and to inform the committee and interested stakeholders of the funding landscape and current directions for

ASD research. Specifically, these analyses will continue to examine the extent to which current funding and research topics align with the *IACC Strategic Plan for Autism Research, Services, and Policy*. The findings will help guide future funding priorities by outlining current gaps and opportunities in ASD research as well as serving to highlight annual research activities and progress.

This revision request includes the following actions: updating all previous references to the “Office of Autism Research Coordination (OARC)” to instead refer to the “Office of National Autism Coordination (ONAC)”;

updating all previous references to the “Autism CARES Act of 2019” to instead refer to the “Autism CARES Act of 2024”, which was signed into law in December 2024 and reauthorizes the IACC through September 2029; updating all previous references to IACC Strategic Plan “Objectives” to instead refer to “Recommendations” after the publication of the 2021–2023 IACC Strategic Plan; updating descriptions of how results of the portfolio analyses will be presented and made publicly available upon request; updating the total burden hours due to an increase in the number of U.S. respondents and an

increase in the number of projects reported by these respondents; updating the annualized total cost to the federal government due to inflation and staffing changes; and, updating information collection materials and background documents to reflect the funders to be included in future autism research portfolio analyses and to allow for project funding data for two years to be provided in one spreadsheet.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 474.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of projects per respondent	Average time per response (in hours)	Total burden hours
U.S. Federal	40	24	15/60	240
U.S. Private	18	47	15/60	212
International Government	1	61	15/60	15
International Private	2	13	15/60	7
Total	61	1,893		474

Dated: February 4, 2026.

Andrew A. Hooper,

Project Clearance Liaison, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2026–02440 Filed 2–5–26; 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; Topics in Basic and Translational Cancer Research.

Date: February 17, 2026.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: David G. Ransom, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W124, National Cancer Institute, NIH, Rockville, MD 20850, (240) 276–6351, david.ransom@nih.gov.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 30, 2026.

Margaret Vardanian,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–02433 Filed 2–5–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0147]

Agency Information Collection Activities; Extension; International Mail Duty Worksheet (IMDW)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-day Notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 9, 2026) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Please submit written comments and/or suggestions in English. 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:

Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (90 FR 55150) on December 01, 2025, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: International Mail Duty Worksheet.

OMB Number: 1651–0147.

Form Number: N/A.

Current Actions: Extension.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: In order to effectuate the President’s Executive Order 14324 of July 30, 2025 (Suspending Duty-Free *De Minimis* Treatment For All Countries), which suspends the duty-free *de minimis* exemption provided under section 321(a)(2)(C) of the Tariff Act of 1930, as amended, for all products, regardless of country of origin, valued at \$800 or less, and requires such articles, except those articles sent to the United States through the international postal network, to be subject to the formal or informal entry process, and establishes a new duty rate for international postal packages sent to the United States through the international postal network, the Secretary of Homeland Security has determined that appropriate action is needed to ensure collection of applicable duties as well as to modify the Harmonized Tariff Schedule of the United States (HTSUS) as set out in the Annex to this notice.

On January 20, 2025, the President declared a national emergency with respect to the grave threat to the United States posed by the influx of illegal aliens and drugs into the United States, in Proclamation 10886 (Declaring a National Emergency at the Southern Border of the United States). See National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA).

In Executive Order 14193 of February 1, 2025 (Imposing Duties To Address the Flow of Illicit Drugs Across Our Northern Border), the President declared a national emergency regarding the unusual and extraordinary threat to the safety and security of Americans, including the public health crisis caused by fentanyl and other illicit drugs and the failure of Canada to do more to arrest, seize, detain, or otherwise intercept drug trafficking organizations, other drug and human traffickers, criminals at large, and illicit drugs. In that order, the President determined that it was necessary and appropriate to, among other things, suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for articles described in section 2(a) and section 2(b) of that order. In Executive Order 14226 of March 2, 2025 (Amendment to Duties To Address the Flow of Illicit Drugs Across Our Northern Border), the

President paused the suspension of duty-free *de minimis* treatment on such articles until the President received a notification from the Secretary of Commerce that adequate systems are in place to fully and expeditiously process and collect duties for such articles that would otherwise be eligible for duty-free *de minimis* treatment.

In Executive Order 14194 of February 1, 2025 (Imposing Duties To Address the Situation at Our Southern Border), the President declared a national emergency regarding the unusual and extraordinary threat to the safety and security of Americans, including the public health crisis caused by fentanyl and other illicit drugs and the failure of Mexico to do more to arrest, seize, detain, or otherwise intercept drug trafficking organizations, other drug and human traffickers, criminals at large, and illicit drugs. In that order, the President determined that it was necessary and appropriate to, among other things, suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for articles described in section 2(a) of that order. In Executive Order 14227 of March 2, 2025 (Amendment to Duties To Address the Situation at Our Southern Border), the President paused the suspension of duty-free *de minimis* treatment on such articles until the President received a notification from the Secretary of Commerce that adequate systems are in place to fully and expeditiously process and collect duties for such articles that would otherwise be eligible for duty-free *de minimis* treatment.

In Executive Order 14195 of February 1, 2025 (Imposing Duties To Address the Synthetic Opioid Supply Chain in the People’s Republic of China), the President declared a national emergency regarding the unusual and extraordinary threat from the failure of the Government of the People’s Republic of China (PRC) to arrest, seize, detain, or otherwise intercept chemical precursor suppliers, money launderers, other transnational criminal organizations, criminals at large, and illicit drugs. In that order, the President determined that it was necessary and appropriate to, among other things, suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for articles described in section 2(a) of that order. In Executive Order 14200 of February 5, 2025 (Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People’s Republic of China), the President paused the suspension of duty-free *de minimis* treatment for articles described in section 2(a) of Executive Order 14195 until the President received a notification from

the Secretary of Commerce that adequate systems are in place to fully and expeditiously process and collect duties for such articles that would otherwise be eligible for duty-free *de minimis* treatment.

The President subsequently received notification from the Secretary of Commerce that adequate systems have been established to process and collect duties for articles of the PRC and Hong Kong that would otherwise be eligible for duty-free *de minimis* treatment, and in Executive Order 14256 of April 2, 2025 (Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China as Applied to Low-Value Imports), the President suspended duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for products of the PRC and Hong Kong described in section 2(a) of Executive Order 14195, as amended by Executive Order 14228 (Further Amendment to Duties Addressing the Synthetic Opioid Supply Chain in the People's Republic of China). In addition, the President instructed the Secretary of Commerce to submit a report regarding the impact of Executive Order 14256 on American industries, consumers, and supply chains and to make recommendations for further action as he deems necessary.

In 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), the President declared a national emergency with respect to underlying conditions indicated by the large and persistent annual U.S. goods trade deficits. The President also provided that duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) would remain available for products described in section 3(a) of that order until the President received a notification by the Secretary of Commerce that adequate systems are in place to fully and expeditiously process and collect duties applicable for articles otherwise eligible for duty-free *de minimis* treatment.

The Secretary of Commerce has notified the President that adequate systems are now in place to fully and expeditiously process and collect duties for articles otherwise eligible for duty-free *de minimis* treatment on a global basis, including for products described in section 2(a) and section 2(b) of Executive Order 14193, section 2(a) of Executive Order 14194, and section 3(a) of Executive Order 14257.

As stated in the President's Executive Order 14324 of July 30, 2025 (Suspending Duty-Free *De Minimis*

Treatment For All Countries), the President determined that it is still necessary and appropriate to suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) in the manner and for the articles described below to deal with the unusual and extraordinary threats, which have their source in whole or substantial part outside the United States, to the national security, foreign policy, and economy of the United States.

In Executive Order 14193 the President determined that it is necessary and appropriate to suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for certain Canadian goods to deal with the emergency declared in Executive Order 14193, as amended. In the President's judgment, this suspension is necessary and appropriate to ensure that the tariffs imposed by Executive Order 14193, as amended, are effective in addressing the emergency declared in Executive Order 14193 and that the purpose of this action and other actions to address the emergency declared in Executive Order 14193 is not undermined. For example, many shippers go to great lengths to evade law enforcement and hide illicit substances in imports that go through international commerce. These shippers conceal the true contents of shipments sent to the United States through deceptive shipping practices. Some of the techniques employed by these shippers to conceal the true contents of the shipments, the identity of the distributors, and the country of origin of the imports include the use of re-shippers in the United States, false invoices, fraudulent postage, and deceptive packaging. The risks of evasion, deception, and illicit-drug importation are particularly high for low-value articles that have been eligible for duty-free *de minimis* treatment.

Independently, the President also determined that it is necessary and appropriate to suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for certain Mexican goods to deal with the emergency declared in Executive Order 14194, as amended. In the President's judgment, and for substantially similar reasons as above, this suspension is necessary and appropriate to ensure that the tariffs imposed by Executive Order 14194, as amended, are effective in addressing the emergency declared in Executive Order 14194 and that the purpose of this action and other actions to address the emergency declared in Executive Order 14194 is not undermined.

Independently, and after considering information newly provided by the

Secretary of Commerce, among other things, the President determined that it is still necessary and appropriate to continue to suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) for certain goods of the PRC and Hong Kong to deal with the emergency declared in Executive Order 14195, as amended. In the President's judgment, and for substantially similar reasons as above, this suspension is still necessary and appropriate to ensure that the tariffs imposed by Executive Order 14195, as amended, are effective in addressing the emergency declared in Executive Order 14195 and that the purpose of this action and other actions to address the emergency declared in Executive Order 14195 is not undermined.

Also independently, the President determined that it is necessary and appropriate to suspend duty-free *de minimis* treatment under 19 U.S.C. 1321(a)(2)(C) on a global basis to deal with the emergency declared in Executive Order 14257, as amended. In the President's judgment, this suspension is necessary and appropriate to ensure that the tariffs imposed by Executive Order 14257, as amended, are not evaded and are effective in addressing the emergency declared in Executive Order 14257 and that the purpose of this action and other actions to address the emergency declared in Executive Order 14257 is not undermined.

The following modified information collection listed below is being submitted to OMB for consideration of approval on an emergency clearance, with the justification of an unanticipated event and reasons to believe following the normal PRA process is likely to prevent or disrupt the collection of information and cause public harm.

Modification of the CBP International Mail Duty Worksheet:

In order for carriers to submit the information required by E.O. 14324, as amended, carriers will fill out the modified CBP International Mail Duty Worksheet (IMDW) and submit it via email to CBPDM@cbp.gov and IntlMailDutyHelp@cbp.dhs.gov.

CBP invites the public to comment on the previously approved emergency changes described above.

Type of Information Collection: International Mail Duty Worksheet.

Estimated Number of Respondents:
100.

Estimated Number of Annual Responses per Respondent: 12.

Estimated Number of Total Annual Responses: 1,200.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 2,400.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2026–02351 Filed 2–5–26; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[267A2100DD/AAKC001030/
A0A501010.000000]

Indian Gaming; Approval by Operation of Law of the Sixth Amendment to the Tribal-State Compact for Class III Gaming Between the Lummi Nation and the State of Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the approval by operation of law of the sixth amendment to the Tribal-State Compact for Class III Gaming between the Lummi Nation and the State of Washington (Amendment) governing the operation and regulation of class III gaming activities.

DATES: The Amendment takes effect on February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Troy Woodward, Acting Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov*; (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of class III gaming activity on the Tribe's Indian lands. See 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(D). The IGRA also requires the Secretary to publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. See 25 U.S.C. 2710(d)(8)(D). As required by 25 CFR 293.4, all compacts and amendments are

subject to review and approval by the Secretary.

The Amendment revises some definitions, adds Appendix E which implements wagering limits, and adds Appendix G which permits electronic wagering.

The Secretary took no action on the Amendment within the 45-day statutory review period. Therefore, the Amendment is considered to have been approved, but only to the extent it is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).

William Henry Kirkland III,

Assistant Secretary—Indian Affairs.

[FR Doc. 2026–02385 Filed 2–5–26; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[267A2100DD/AAKC001030/
A0A501010.000000]

Indian Gaming; Approval by Operation of Law of the First Amendment to the Tribal-State Gaming Compact Between the State of California and the Sycuan Band of the Kumeyaay Nation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the approval by operation of law of the first amendment to the Tribal-State Gaming Compact between the State of California and the Sycuan Band of the Kumeyaay Nation (Amendment) governing the operation and regulation of class III gaming activities.

DATES: The compact takes effect on February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Troy M. Woodward, Acting Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov*; (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of class III gaming activity on the Tribe's Indian lands. See 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. See 25 U.S.C.

2710(d)(8)(D). The IGRA also requires the Secretary to publish in the **Federal Register** a notice of the approved Tribal-State compact for the purpose of engaging in class III gaming activities on Indian lands. See 25 U.S.C. (d)(8)(D). As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary.

The Secretary took no action on the Amendment within the 45-day statutory review period. Therefore, the Amendment is considered to have been approved, but only to the extent it is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).

William Henry Kirkland III,

Assistant Secretary—Indian Affairs.

[FR Doc. 2026–02378 Filed 2–5–26; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[267A2100DD/AAKC001030/
A0A501010.999900]

Receipt of Documented Petition for Federal Acknowledgment as an American Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) gives notice that the group known as the Gabrielino/Tongva Nation has filed a documented petition for Federal acknowledgment as an American Indian Tribe with the Assistant Secretary—Indian Affairs. The Department seeks comments and evidence from the public on the petition.

DATES: Comments and evidence must be postmarked by June 8, 2026.

ADDRESSES: Copies of the narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under 25 CFR 83.21(b)), and other information are available at the Office of Federal Acknowledgment's (OFA) website: *www.bia.gov/as-ia/ofa*. Submit any comments or evidence to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, Mail Stop 4071 MIB, 1849 C Street NW, Washington, DC 20240, or by email to: *Ofa_Info@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki Bass, OFA Director, Office of the Assistant Secretary—Indian Affairs, Department of the Interior, by phone:

(202) 513-7650; or by email: *Ofa_Info@bia.gov*.

SUPPLEMENTARY INFORMATION: On July 31, 2015, the Department's revisions to 25 CFR part 83 became final and effective (80 FR 37861). A key goal of the revisions was to improve transparency through increased notice of petitions and providing improved public access to petitions. Today, the Department informs the public that a complete documented petition has been submitted under the current regulations, that portions of that petition are publicly available on the website identified above for easy access, and that we are seeking public comment early in the process on this petition.

Under 25 CFR 83.22(b)(1), OFA publishes notice that the following group has filed a documented petition for Federal acknowledgment as an American Indian Tribe to the Assistant Secretary—Indian Affairs: Gabrielino/Tongva Nation. The contact information for the petitioner is Ms. Sandonne Goad, 13191 Crossroads Pkwy North, Suite 375, City of Industry, California 91746.

Also, under 25 CFR 83.22(b)(1), OFA publishes on its website the following:

- i. The narrative portion of the documented petition, as submitted by the petitioner (with any redactions appropriate under 25 CFR 83.21(b));
- ii. The name, location, and mailing address of the petitioner and other information to identify the entity;
- iii. The date of receipt;
- iv. The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for acknowledgment within 120 days of the date of the website posting; and
- v. The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.

Authority

The Department publishes this notice and request for comment in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by Departmental Manual part 209, chapter 8.

William Henry Kirkland III,

Assistant Secretary for Indian Affairs.

[FR Doc. 2026-02380 Filed 2-5-26; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**[256A2100DD/AAKC001030/
AOA501010.000000]**

Indian Gaming; Approval by Operation of Law of the Amendment to the Iowa Tribe of Kansas and Nebraska—Kansas Gaming Compact

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the approval by operation of law of the amendment to the Iowa Tribe of Kansas and Nebraska—Kansas Gaming Compact (Amendment) governing the operation and regulation of class III gaming activities.

DATES: The Amendment takes effect on February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Mr. Troy Woodward, Acting Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov*; (202) 219-4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.*, (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of class III gaming activity on the Tribe's Indian lands. See 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary, but only to the extent the compact is consistent with IGRA. See 25 U.S.C. 2710(d)(8)(D). The IGRA also requires the Secretary to publish in the **Federal Register** a notice of the approved Tribal-State compact for the purpose of engaging in class III gaming activities on Indian lands. See 25 U.S.C. 2710(d)(8)(D). As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary.

The Amendment authorizes sports wagering including a hub-and-spoke betting model that deems wagers placed anywhere in the State occur on the Tribe's Indian lands where the servers are located, provided the wager is not placed on another Tribe's Indian lands. The Secretary took no action on the Amendment within the 45-day statutory review period. Therefore, the Amendment is considered to have been approved, but only to the extent it is

consistent with IGRA. See 25 U.S.C. 2710(d)(8)(C).

William Henry Kirkland III,

Assistant Secretary—Indian Affairs.

[FR Doc. 2026-02379 Filed 2-5-26; 8:45 am]

BILLING CODE 4337-15-P

NUCLEAR REGULATORY COMMISSION

[NRC-2025-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 4, 11, 18, 25, and September 1 and 8, 2025. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov*.

MATTERS TO BE CONSIDERED:

Week of August 4, 2025

There are no meetings scheduled for the week of August 4, 2025.

Week of August 11, 2025—Tentative

There are no meetings scheduled for the week of August 11, 2025.

Week of August 18, 2025—Tentative

There are no meetings scheduled for the week of August 18, 2025.

Week of August 25, 2025—Tentative

There are no meetings scheduled for the week of August 25, 2025.

Week of September 1, 2025—Tentative

There are no meetings scheduled for the week of September 1, 2025.

Week of September 8, 2025—Tentative

Tuesday, September 9, 2025

10:00 a.m. All Employees Meeting
(Public Meeting)

(Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the TWFN Auditorium, 11545 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 30, 2025.

For the Nuclear Regulatory Commission.

Monika Coflin,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2026–02421 Filed 7–30–25; 11:15 am]

BILLING CODE 7590–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–748–749 and 731–TA–1726–1727 (Final)]

Float Glass Products From China and Malaysia; Cancellation of Hearing for Antidumping and Countervailing Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 3, 2026.

FOR FURTHER INFORMATION CONTACT:

Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. 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 (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: Effective July 15, 2025, the Commission established a schedule for the final phase of the subject antidumping and countervailing duty investigations (90 FR 38991, August 13, 2025). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission issued a revised schedule (90 FR 52999, November 24, 2025). Due to the Department of Commerce's tolling of case deadlines by an additional 21 calendar days, the Commission issued a second revised schedule (90 FR 57483, December 11, 2025). On January 30, 2026, counsel for Vitro Flat Glass, LLC and Vitro Meadville Flat Glass, LLC ("Vitro") filed a request that the Commission cancel the scheduled hearing for this proceeding, as well as a request to participate in the hearing, if held. It indicated a willingness to respond to any Commission questions in lieu of an actual hearing given that no other parties had submitted a request to appear at the hearing. Consequently, the public hearing in connection with this proceeding, scheduled to begin at 9:30 a.m. on February 5, 2026, is cancelled. Parties to this proceeding should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on February 12, 2026.

For further information concerning this proceeding, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–02404 Filed 2–5–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–758 and 731–TA–1739 (Final)]

Fiberglass Door Panels From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–758 and 731–TA–1739 (Final) pursuant to the Tariff Act of 1930 to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fiberglass door panels from China, provided for in subheading 3925.20.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce ("Commerce") to be subsidized and sold at less-than-fair-value.

DATES: January 22, 2026.

FOR FURTHER INFORMATION CONTACT:

Tyler Berard (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as "fiberglass door panels, including fiberglass sidelites, whether finished or unfinished, whether assembled or unassembled, whether pre-hung or included in an entry door system. The subject fiberglass door panels consist of at least one fiberglass skin, and may contain (1) frames typically made of wood or composite stiles, bottom rails, and top rails, (2) binding materials, including adhesives or fasteners, and (3) insulation foam or other insulating material, and may be assembled with glass lites (glass that is ultimately installed in the fiberglass door panel). Fiberglass sidelites (or "sidelights") are typically smaller in width than fiberglass door panels, and consist of at least one fiberglass skin, and may contain (1) frames typically made of wood or composite stiles, bottom rails, and top rails, (2) binding materials, including adhesives or fasteners, and (3) insulation foam or other insulating

material, and may be assembled with glass lites (glass that is ultimately installed in the fiberglass sidelite). Subject merchandise includes fiberglass door panels and sidelites whether the fiberglass skin surface is painted or unpainted, contains or does not contain cut-outs for door components, or assembled or unassembled with glass lites in the door.

The country of origin of the fiberglass door panel is determined by where the fiberglass door skin is pressed.

Fiberglass door panels and sidelites are covered by the investigation whether they are imported attached to, or in conjunction with door components and accessories (including but not limited to door jambs, door handles, locks, hinges, door stoppers, door kicks, door thresholds, door sills, and trim), in a pre-hung door system, or an entry door system. Subject fiberglass door panels and sidelites are covered whether or not they are accompanied by other parts. However, if a subject fiberglass door panel or sidelite is imported in a pre-hung door system or entry door system, only the fiberglass door panel and sidelite, including when assembled with glass lites or when the glass lites are shipped with the subject merchandise for further assembly, are covered by the scope. Door components and accessories (including but not limited to transoms, door jambs, door handles, locks, hinges, door stoppers, door kicks, door thresholds, door sills, and trim) are not included in the scope when imported with a fiberglass door panel or sidelite, including when such components or accessories are assembled to a fiberglass door panel or sidelite, or when imported separately. Subject merchandise may be impact-rated to withstand hurricane force wind loads and may be reinforced with steel sheet or plate. Impact-rated doors may be certified to Testing Application Standards (TAS) 201/202/203–94/ and American Society for Testing and Materials (ASTM) E330–02/14/M–14, E1886–05/13a/, or E1996–09/14a.

Subject merchandise may be fire-rated for up to 90 minutes and may contain flame retardant composites, including, but not limited to flame retardant foam or mineral core materials, including but not limited to low density calcium silicate. Fire-rated doors generally satisfy the National Fire Protection Association (NFPA) 252 Standard Methods of Fire Tests of Door Assemblies and UL10(b) and (c)-Standard for Safety-Fire Tests of Door Assemblies.

Subject merchandise also includes fiberglass door panels and sidelites that have been processed in a third country,

including but not limited to one or more of the following: filling with insulation foam, trimming, cutting, notching, punching, drilling, painting, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product. The inclusion of other parts, such as door components and accessories (including but not limited to door jambs, door handles, locks, hinges, door stoppers, door kicks, door thresholds, door sills, and trim) in a third country does not remove the fiberglass door panels and sidelites from the scope.

Excluded from the scope of this investigation are all products covered by the scope of the antidumping duty and countervailing duty orders on wood mouldings and millwork products from China. See Wood Mouldings and Millwork Products from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order, 86 FR 9486 (February 16, 2021); and Wood Mouldings and Millwork Products from the People's Republic of China: Countervailing Duty Order, 86 FR 9484 (February 16, 2021).

Excluded from the scope of this investigation are all products covered by the scope of the antidumping duty and countervailing duty proceedings on float glass products from China. See Float Glass Products from the People's Republic of China and Malaysia: Initiation of Less-Than-Fair-Value Investigations, 90 FR 1435 (January 8, 2025); and Float Glass Products from the People's Republic of China and Malaysia: Initiation of Countervailing Duty Investigations, 90 FR 1443 (January 8, 2025).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical number 3925.20.0010. Subject merchandise may also be classified under 4418.29.4000, 4418.29.8030, 4418.29.8060, or 7019.90.5150. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive."

Background.—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters

in China of fiberglass door panels, and that such products are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 20, 2025, by the American Fiberglass Door Coalition, the members of which are Thermo-Tru Corporation, Maumee, Ohio; PlastPro Doors Inc., Los Angeles, California; and Owens Corning, Toledo, Ohio.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such

access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 21, 2026, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Tuesday, June 9, 2026. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before Wednesday, June 3, 2026. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID-19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on Friday, June 5, 2026. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than noon on June 8, 2026. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is June 1, 2026. Parties shall also file written testimony in connection with their presentation at the hearing,

and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 16, 2026. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 16, 2026. On July 1, 2026, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 6, 2026, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02403 Filed 2-5-26; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 2, 2026, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of New York in the lawsuit entitled *U.S. v. Amparit Industries LLC, et al.*, Civil No. 5:26-cv-173.

In that action, the United States sought, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.*, recovery of response costs regarding the Ley Creek Deferred Media Operable Unit ("Site") of the Onondaga Lake Superfund Site in Salina and Dewitt, Onondaga County, New York. The proposed consent decree will require six settling defendants to make individual payments totaling \$245,300 to the U.S. Environmental Protection Agency for its past and future response costs at the Site.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *U.S. v. Amparit Industries LLC*, D.J. Ref. No. 90-11-3-08348/9. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the consent decree, you may request assistance by email or by mail to the

addresses provided above for submitting comments.

Eric D. Albert,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2026-02353 Filed 2-5-26; 8:45 am]

BILLING CODE 4410-15-P

DEPARTMENT OF JUSTICE

[OMB Number 1122-0031]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection: Title—Campus Program Grantee Needs and Progress Assessment Tool

AGENCY: Office on Violence Against Women, U.S. Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 7, 2026.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tiffany Watson, Office on Violence Against Women, at 202-307-6026 or Tiffany.Watson@usdoj.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the office, 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) Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; 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 submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Campus Program Grantee Needs and Progress Assessment Tool.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122-0031. U.S. Department of Justice, Office on Violence Against Women.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes current grantees under the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program. The Campus Program strengthens the response of institutions of higher education to the crimes of sexual assault, domestic violence, dating violence and stalking on campuses and enhances collaboration among campuses, local law enforcement, and victim advocacy organizations. Eligible applicants are institutions of higher education. The Grantee Needs and Progress Assessment Tool will be used to determine the training and technical assistance needs of Campus Program grantees—both new and continuation grantees—throughout the life of the grant award, as well measure the development of the capacity of grantees to respond and prevent violence against women on their campuses. In addition, the tool will help campuses, and OVW, document the impact of their grant-funded work, promote sustainability of important intervention and prevention activities, and provide outcome-based information throughout the life of the grant to help OVW-funded technical assistance providers and grantees make changes to the goals and objectives necessary to achieve the Congressional purpose of the Campus Program.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 30 respondents (Campus Program grantees) approximately 2 hours to complete the assessment tool.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the assessment form is 60 hours, that is 30 grantees completing a form once a year with an estimated completion time for the form being two hours.

7. *If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: February 4, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026-02336 Filed 2-5-26; 8:45 am]

BILLING CODE 4410-FX-P

DEPARTMENT OF JUSTICE

[OMB Number 1121-0377]

Agency Information Collection Activities; Proposed eCollection eComments Requested Extension of a Currently Approved Collection Title: Data Security Requirements for Accessing Confidential Data

AGENCY: Bureau of Justice Statistics, Department of Justice

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 7, 2026.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact the Devon Adams, Bureau of Justice Statistics, 999 North Capitol Street NE, Washington, DC 20531 (email: devon.adams@usdoj.gov or BJSPRA.Comments@ojp.usdoj.gov; telephone: (202) 307-0765). Please include "STANDARD APPLICATION PROCESS" in the subject line.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information

are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Data Security Requirements for Accessing Confidential Data.

3. *The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no form number associated with this information collection. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets for statistical purposes, including evidence-building. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is a single web-based common application for requesting access to confidential data assets from federal

statistical agencies and units. On behalf of BJS and the other federal statistical agencies and units, the National Center for Science and Engineering Statistics (NCSES) submitted the OMB the recertification request to the currently approved Standard Application Portal (3145–0271). OMB approved the action for an additional three years expiring on December 31, 2028. The data security requirements apply to this form (https://www.reginfo.gov/public/do/PRAViewRCF?ref_nbr=202512-0535-001CF).

Once an application for confidential data is approved through the SAP Portal, BJS will collect information to meet its data security requirements when providing access to restricted use (confidential) microdata for the purpose of evidence building. This collection will occur outside of the SAP Portal. BJS's data security agreements and other paperwork along with the corresponding security protocols allow the agency to maintain careful controls on confidentiality and privacy, as required by law. If an application requesting access to an BJS-owned confidential data asset is approved, BJS will contact the applicant(s) to initiate the process of collecting the following information to fulfill its data security requirements:

- *Restricted data use agreement*—This document is an agreement between BJS's official archive (currently the National Archive of Criminal Justice Data [NACJD]), on behalf of BJS, and the user(s) who is approved to access BJS's confidential data assets exclusively for statistical purposes, including evidence-building, in accordance with the terms and conditions stated in the agreement and all applicable federal laws and regulations. An applicant must submit the appropriate data security plan information to describe how they will protect the data from misuse and unauthorized access. The agreement describes the penalties associated with the misuse or unauthorized access of the data. The agreement requires signature from the applicant(s) and any other representative who has the authority to enter into a legal agreement with NACJD, as applicable.

- *Privacy Certificate*—Office of Justice Programs regulations at 28 CFR part 22 require that a Privacy Certificate be submitted as part of any application for a project in which information identifiable to a private person will be collected, analyzed, or otherwise used for research or statistical purposes. The Privacy Certificate describes the specific technical, administrative, and physical controls and procedures that will be used to protect data confidentiality and

safeguard the data from misuse or unauthorized access. The Privacy Certificate is an applicant's certification to comply with BJS's confidentiality requirements. All individuals who will have access to the confidential BJS data are required to sign a Privacy Certificate to affirm their understanding of and agreement to comply with BJS's confidentiality requirements.

- *Data security plan*—This document describes the data access modality requested (physical enclave, virtual enclave, or secure download) and the specific data security measures and technical, physical, and administrative controls that will be followed to protect data from unauthorized disclosure and misuse.

- *Confidentiality Pledge*—This document describes the applicant's responsibilities related to accessing restricted data and confidentiality protections the applicant(s) must uphold, including adhering to applicable federal laws and regulations. The assurance requires signature from the applicant(s) and certifies their understanding of and agreement to fulfill the terms in the data use agreement and data security plan.

- *Institutional Review Board (IRB) Documentation*—Users of BJS restricted data must comply with Department of Justice regulations at 28 CFR part 46 (Protection of Human Subjects), including ensuring that adequate protections are in place to protect the confidentiality of information identifiable to a private person.

Applicants must submit the appropriate documentation to demonstrate that an IRB has approved or exempted the proposed project using BJS restricted data in accordance with the requirements in 28 CFR part 46.

- *Certification of Training*—Users of BJS restricted data will be required to complete relevant data security, confidentiality, and privacy training, as appropriate, and provide written certification of completion.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The amount of time to complete the agreements and other paperwork that comprise BJS's security requirements will vary based on the confidential data assets requested. To obtain access to BJS confidential data assets, it is estimated that the average time to complete and submit BJS's data security agreements, IRB application, and other paperwork is 3 hours (180 minutes). This estimate does not include the time needed to complete and submit an application within the SAP Portal or time waiting to receive

from an IRB determination after submitting an application. All efforts related to SAP Portal applications occur prior to and separate from BJS's effort to collect information related to data security requirements.

6. *An estimate of the total public burden (in hours) associated with the collection:* The expected number of applications in the SAP Portal that receive a positive determination from BJS in a given year may vary. Overall, per year, BJS estimates it will collect data security information for 55 application submissions that received a positive determination within the SAP Portal. BJS estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 495 hours and, as a result, an average annual burden of 165 hours.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Enterprise Portfolio Management, Two Constitution Square, 145 N street NE, 4W-218, Washington, DC 20530.

Dated: February 4, 2026.

Darwin Arceo,

Department Clearance Officer, U.S.
Department of Justice.

[FR Doc. 2026-02334 Filed 2-5-26; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Labor Standards for Federal Service Contracts

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage and Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 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 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Nora Hernandez by telephone at 202-693-8633, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Department of Labor's (Department) Wage and Hour Division (WHD) is authorized to administer and enforce a variety of laws that establish the minimum standards for wages and working conditions in the United States. Collectively, these labor standards cover most private, state, and local government employment. The WHD administers the McNamara-O'Hara Service Contract Act (SCA or Act), 41 U.S.C. 351 *et seq.* The SCA applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish services to the United States through the use of service employees. The SCA requires contractors and subcontractors performing services on covered federal or District of Columbia contracts in excess of \$2,500 to pay service employees in various classes no less than the monetary wage rates and fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement. Safety and health standards also apply to such contracts. WHD enforces the compensation requirements of the SCA. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 7, 2025 (90 FR 38185).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology. To help ensure appropriate consideration, comments should reference OMB Control Number 1235-0007.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review. The Department of Labor seeks approval for the revision of this information collection to ensure effective administration of the laws administered by the WHD.

Agency: DOL-WHD.

Title of Collection: Labor Standards for Federal Service Contracts

OMB Control Number: 1235-0007.

Affected Public: Private Sector: Businesses or other for-profits.

Total Estimated Number of Respondents: 128,648.

Total Estimated Number of Responses: 128,648.

Total Estimated Annual Time Burden: 127,607 hours.

Total Estimated Annual Other Costs Burden: \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

PRA Department Clearance Officer.

[FR Doc. 2026-02448 Filed 2-5-26; 8:45 am]

BILLING CODE 4510-27-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Center for Science and Engineering Statistics, National Science Foundation.

ACTION: Notice.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation invites the general public and other federal agencies to comment on a renewal for a proposed information collection, OMB control number 3145-0278. NCSES plans to collect information from individuals to fulfill

its data security requirements when providing the individual with access to restricted use microdata for the purpose of evidence building. NCSES's data security agreements and other paperwork along with the corresponding security protocols allow the agency to maintain careful controls on confidentiality and privacy, as required by law. The purpose of this notice is to allow for 60 days of public comment on the proposed data security information collection, prior to submission of the information collection request (ICR) to the Office of Management and Budget (OMB).

DATES: Written comments on this notice must be received by April 7, 2026 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

ADDRESSES: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 401 Dulaney Street, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of NCSES, including whether the information will have practical utility; (b) the accuracy of NCSES estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the Office of Management and Budget (OMB) establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act of 2018, it is recognized that other agencies and organizational units within the Executive branch may benefit from

the adoption of the SAP to accept applications for access to confidential data assets. The SAP is a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purpose of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied worked with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is a single web-based common application for requesting access to confidential data assets from federal statistical agencies and units. The information collected through the SAP Portal is approved under an ICR, OMB control number 3145-0271.

Once an application for confidential data is approved through the SAP Portal, NCSES plans to collect information to meet its data security requirements. This proposed collection would occur outside of the SAP Portal.

Title of Collection: Data Security Requirements for Accessing Confidential Data.

OMB Control Number: 3145-0278.

Expiration Date of Current Approval: July 31, 2026.

Type of Request: Intent to seek approval to collect information to fulfill NCSES's security requirements allowing individuals to access confidential data assets for the purposes of building evidence.

Abstract:

Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. Specifically, the Evidence Act requires OMB to establish a common application process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets collected, accessed, or acquired by a statistical agency or unit. This process was implemented while maintaining stringent controls to protect confidentiality and privacy, as required by law.

Data collected, accessed, or acquired by statistical agencies and units is vital for developing evidence on the characteristics and behaviors of the public and on the operations and

outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, as well as policymakers and program managers at the local, State, Tribal, and National levels. The many benefits of access to data for evidence building notwithstanding, NCSES is required by law to maintain careful controls that allow it to minimize disclosure risk while protecting confidentiality and privacy. The fulfillment of NCSES's data security requirements places a degree of burden on individuals, which is outlined below.

The SAP Portal is a web-based application to allow individuals to request access to confidential data assets from federal statistical agencies and units. The objective of the SAP Portal is to broaden access to confidential data for the purposes of evidence building and reduce the burden of applying for confidential data. Once an individual's application in the SAP Portal has received a positive determination, the data-owning agency(ies) or unit(s) begin the process of collecting information to fulfill their data security requirements.

The paragraphs below outline the SAP Policy, the steps to complete an application through the SAP Portal, and the process NCSES proposed to use to collect information fulfilling its data security requirements.

The SAP Policy

At the recommendation of the ICSP, the SAP Policy established the SAP to be implemented by statistical agencies and units and incorporate directives from the Evidence Act. The policy is intended to provide guidance as to the application and review processes using the SAP Portal, setting forth clear standards that enable statistical agencies and units to implement a common application form and a uniform review process. The SAP Policy was issued in December of 2022 as OMB memorandum 23-04: <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-04.pdf>.

The SAP Portal

The SAP Portal is an application interface connecting applicants seeking data with a catalog of metadata for data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal provides a streamlined application process across agencies, reducing redundancies in the application process.

This single SAP Portal improves the process for applicants, tracking and communicating the application process throughout its lifecycle. This reduces redundancies and burden on applicants who request access to data from multiple agencies. The SAP Portal automates key tasks to save resources and time and brings agencies into compliance with the Evidence Act statutory requirements.

Data Discovery

Individuals begin the process of accessing restricted use data by discovering confidential data assets through the SAP metadata catalog maintained by federal statistical agencies at www.researchdatagov.org. Potential applicants can search by agency, topic, or keyword to identify data of interest or relevance. Once they have identified data of interest, applicants can view metadata outlining the title, description or abstract, scope and coverage, and detailed methodology related to a specific data asset to determine its relevance to their research.

While statistical agencies and units endeavor to include information in the SAP metadata catalog on all confidential data assets for which they accept applications, it may not be feasible to include metadata for some data assets (e.g., potential special tabulations of administrative data). A statistical agency or unit may still accept an application through the SAP Portal even if the requested data asset or special tabulation is not listed in the SAP metadata catalog.

SAP Application Process

Individuals who have identified and wish to access confidential data assets are able to apply for access through the SAP Portal. Applicants must create an account and follow all steps to complete the application. Applicants begin by entering their personal, contact, and institutional information, as well as the personal, contact, and institutional information of all individuals on their research team. Applicants provide summary information about their proposed project to include project title, duration, funding, and timeline. Other details provided by applicants include the data asset(s) they are requesting and any proposed linkages to data not listed in the SAP metadata catalog, including non-federal data sources. Applicants then enter detailed information regarding their proposed project, including a project abstract, research question(s), literature review, project scope, research methodology, project products, and anticipated output.

Within the application, applicants must demonstrate a need for confidential data, outlining why their research question cannot be answered using publicly available information.

Submission for Review

Upon submission of their application, applicants receive a notification that their application has been received and is under review by the data-owning agency or agencies (in the event where data assets are requested from multiple agencies). At this point, applicants are notified that application approval does not alone grant access to confidential data, and that, if approved, applicants must comply with the data-owning agency's security requirements outside of the SAP Portal, which may include a background check.

In accordance with the Evidence Act and the direction of the ICSP, agencies will approve or reject an application within a prompt timeframe. In some cases, agencies may determine that additional clarity, information, or modification is needed and request the applicant to "revise and resubmit" their application.

Access to Restricted Use Data

In the event of a positive determination, the applicant is notified that their proposal has been accepted. The positive or final adverse determination concludes the SAP Portal process. In the instance of a positive determination, the data-owning agency (or agencies) contacts the applicant to provide instructions on the agency's security requirements that must be completed by the applicant to gain access to the confidential data. The completion and submission of the agency's security requirements take place outside of the SAP Portal.

Collection of Information for Data Security Requirements

In the instance of a positive determination for an application requesting access to an NCSES-owned confidential data asset, NCSES contacts the applicant(s) to initiate the process of collecting information to fulfill its data security requirements. This process allows NCSES to place the applicant(s) in a trusted access category and includes the collection of the following information from applicant(s):

- **Restricted-use licensing agreement**—This document is an agreement between NCSES and the applicant's organization provisioning NCSES's confidential data assets exclusively for statistical purposes in accordance with the terms and conditions stated in the agreement and

all prevailing laws and regulations. The agreement requires signatures from the applicant(s) and a senior official at the applicant's organization who has the authority to enter the organization into a legal agreement with NCSES.

- **Security plan form**—This document requests information from the applicant(s) to ensure the confidential data assets are protected from unauthorized access, disclosure, or modification. The information collected in the security plan form includes the following:

- planned work location address(es),
- workstation specifications (make, model, serial number, type, and operating system),
- workstation authorized users,
- workstation monitor position (to prevent unauthorized viewing), and
- workstation antivirus brand and version.

In addition, the applicant(s) must initial a series of security measures to indicate compliance. Finally, the form requires signatures from the applicant(s), a senior official at the applicant's organization, and a Information System Security Officer (ISSO) at the applicant's organization. The ISSO, in signing the Security plan form, assures the inspection and integrity of the applicant's security plan.

- **Affidavit of nondisclosure form**—This document describes the confidentiality protections the applicant(s) must uphold and the penalties for unauthorized access or disclosure. The form requires signatures from the applicant(s) and the principal researcher for the project as well as the imprint of a notary public.

Estimate of Burden

The amount of time to complete the agreements and other paperwork that comprise NCSES's security requirements will vary based on the confidential data assets requested. To obtain access to NCSES confidential data assets, it is estimated that the average time to complete and submit NCSES's data security agreements and other paperwork is 30 minutes. This estimate does not include the time needed to complete and submit an application within the SAP Portal. All efforts related to SAP Portal applications occur prior to and separate from NCSES's effort to collect information related to data security requirements.

The expected number of applications in the SAP Portal that receive a positive determination from NCSES in a given year may vary. Overall, per year, NCSES estimates it will collect data security information for 20 application

submissions that received a positive determination within the SAP Portal. NCSES estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 30 hours and, as a result, an average annual burden of 10 hours.

Dated: January 30, 2026.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2026-02447 Filed 2-5-26; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2026-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 9, 16, and 23, and March 2, 9 and 16, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please contact the Reasonable Accommodations Resource by email at Reasonable_Accommodations.Resource@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of February 9, 2026

There are no meetings scheduled for the week of February 9, 2026.

Week of February 16, 2026—Tentative

There are no meetings scheduled for the week of February 16, 2026.

Week of February 23, 2026—Tentative

There are no meetings scheduled for the week of February 23, 2026.

Week of March 2, 2026—Tentative

There are no meetings scheduled for the week of March 2, 2026.

Week of March 9, 2026—Tentative

There are no meetings scheduled for the week of March 9, 2026.

Week of March 16, 2026—Tentative

There are no meetings scheduled for the week of March 16, 2026.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 4, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026-02451 Filed 2-4-26; 4:15 pm]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-9086; NRC-2026-0595]

International Isotopes Fluorine Products; Consideration of Approval of Transfer of Control of License

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct and indirect transfer of licenses; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) received and is considering approval of an application filed by International Isotopes Fluorine Products (IIFP) on October 1, 2025, as supplemented by letter dated October 1, 2025. The application seeks NRC consent to the direct transfer of control of the materials license SUB-1011, held by International Isotopes Fluorine Products to Green Salt Products, LLC (GSP). The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Submit comments by March 9, 2026. A request for a hearing or petition for leave to intervene must be filed by February 26, 2026. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2026-0595. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301-415-1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Hearing.Docket@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. eastern time (ET) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Diana Woodyatt, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1245; email: Diana.Woodyatt@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2026-0595 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2026-0595.

- *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>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's

Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2026–0595 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order pursuant to 10 CFR 40.46, “Inalienability of licenses,” 10 CFR 110.50, “Terms,” and 10 CFR 110.51, “Amendment and renewal of licenses,” approving the direct transfer of control of NRC license number SUB–1011, (Docket No. 40–9086) from IIFP to GSP. International Isotopes, Inc. (INIS) holds the license to a depleted uranium deconversion and fluorine processing venture.

On October 1, 2025, IIFP and GSP submitted an application (ADAMS Accession No. ML25273A381) via the NRC's Electronic Information Exchange requesting NRC consent to the direct

transfer of control. The request arises from an Asset Purchase Agreement dated February 8, 2024, under which INIS and its wholly owned subsidiary IIFP would sell INIS's assets related to its depleted uranium deconversion and fluorine processing venture—including license SUB–1011—to GSP, a wholly owned American Fuel Resources (AFR) subsidiary. GSP would become the licensee and operations company for the facility.

As part of the proposed action, the licensee name would change from “International Isotopes Fluoride Products, Inc.” to “Green Salt Products, LLC,” and the facility name would change from “IIFP Fluorine Extraction and Depleted Uranium Deconversion Plant” to “Green Salt Products Depleted Uranium Deconversion Plant.” The applicants state no changes are proposed to the use, possession, locations, storage, facilities, equipment, or procedures associated with licensed activities. The licensed site near Hobbs/Lea County, New Mexico remains undeveloped; no construction has begun, and no licensed material has ever been received under SUB–1011.

The proposed transfer (collectively, “The Transaction”) will occur in one step. This step involves the direct transfer of control of IIFP's NRC materials license SUB–1011 ownership of the relevant assets and operations related to GSP. As a result of this step, GSP will become the new licensee for SUB–1011.

With respect to management and qualifications, the applicants identify two personnel substitutions associated with the license: GSP's President/CEO would replace IIFP's President/CEO and GSP's Radiation Safety Officer (RSO) would replace IIFP's RSO; all other positions identified in the license are currently unfilled, and no other changes in operations or licensed activities are anticipated.

In its submittal, GSP will be financially qualified to engage in NRC-licensed activities and that, prior to closing the Transaction, and, upon the NRC providing its consent to the transfers of control of the license, GSP will comply with the financial assurance and decommissioning funding requirements in the license, including providing final financial assurance instruments at least six months before obtaining radioactive material and final executed instruments at least 21 days before receiving material (License Conditions 14 and 15), and submitting/updating the Decommissioning Funding Plan (DFP) and Decommissioning Cost Estimate (DCE) as required.

Section 184, “Inalienability of Licenses,” of the Atomic Energy Act of 1954, as amended, (the Act) states that “[n]o license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.” The NRC's regulations at 10 CFR 50.80, 70.36, and 72.50 provide that no license, or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transfer of control will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305 and 10 CFR 110.81. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's “Agency Rules of Practice and Procedure” in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 20 days from the date of publication of this notice in accordance with the filing

instructions in the “Electronic Submissions (E-Filing)” section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 20 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and on the NRC’s public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is in the “Guidance for Electronic Submissions to the NRC” (ADAMS Accession No. ML13031A056) and on the NRC’s public website at <https://www.nrc.gov/site-help/esubmittals.html>.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2)

advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC’s public website at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC’s public website at <https://www.nrc.gov/site-help/electronic-sub-refmat.html>. A filing is considered complete at the time the document is submitted through the NRC’s E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC’s Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC’s adjudicatory E-Filing system may seek assistance by contacting the NRC’s Electronic Filing Help Desk through the “Contact Us” link located on the NRC’s public website at <https://www.nrc.gov/site-help/esubmittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings

must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC’s electronic hearing docket, which is publicly available at <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click “cancel” when the link requests certificates and you will be automatically directed to the NRC’s electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this notice, see the application dated October 1, 2025 (ADAMS Accession No. ML25273A381), as supplement by letter dated October 1, 2025 (ADAMS Accession No. ML25274A143).

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the Applicant by emailing Jack Higginbotham, Director of Licensing, Radiation Safety Officer, at jack.higginbotham@greensaltproducts.com for the purpose of negotiating a confidentiality

agreement or a proposed protective order with the Applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated: February 4, 2026.

For the Nuclear Regulatory Commission.

Tekia Govan,

*Acting Chief, Fuel Facility Licensing Branch,
Division of Fuel Management, Office of
Nuclear Material Safety and Safeguards.*

[FR Doc. 2026-02322 Filed 2-5-26; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2025-2062]

State of Wyoming: NRC Staff Assessment of a Proposed Amendment to the Agreement Between the Nuclear Regulatory Commission and the State of Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed amendment to state agreement; request for comment.

SUMMARY: As required by Section 274e. of the Atomic Energy Act of 1954, as amended (AEA), the U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing the proposed Agreement for public comment (Appendix A). The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory source material program. Comments are requested on the proposed amendment to the Agreement and its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's source material program, and the adequacy of the staffing of the State's program, as discussed in this document.

DATES: Submit comments by March 2, 2026. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2025-2062. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran;

telephone: 301-415-1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-5-A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Allyce Bolger, telephone: 301-415-0855; email: Allyce.Bolger@nrc.gov and Huda Akhavannik, telephone: 301-415-5253; email: Huda.Akhavannik@nrc.gov. Both are staff of the Office of Nuclear Material Safety and Safeguards at the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2025-2062 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2025-2062.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

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

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking Website (<https://www.regulations.gov>). Please include Docket ID NRC-2025-2062 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

SUPPLEMENTARY INFORMATION: By letter dated August 5, 2025, Governor Mark Gordon of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) amend its Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA). Under the proposed amendment to the Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content. Since 2018, Wyoming's existing Agreement allows the State to assume regulatory authority over byproduct materials as defined in Section 11e.(2) of the AEA, and source materials involved in the extraction or concentration of uranium or thorium in source material and ores at milling facilities.

II. Additional Information on Agreements Entered Under Section 274 of the AEA

Under the proposed amended Agreement, the NRC would discontinue its authority over source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content and would transfer its regulatory authority to the State of Wyoming. There is

currently one NRC licensee that would be transferred to the State of Wyoming under this proposed amended Agreement. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This document is being published in fulfillment of that requirement.

III. Proposed Amended Agreement With the State of Wyoming

Background

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as “Agreement materials,” are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The State of Wyoming has requested authority over a subcategory of source material in this amendment to its Agreement, specifically:

(a) source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content.

(b) The proposed amended Agreement contains articles that:

(i) Specify the materials and activities over which authority was transferred in 2018 and in this amendment;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, protect restricted data, and protect common defense and security;

(iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the amended Agreement; and

(vii) Specify the effective date of the proposed amended Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in

response to comments, to correct errors, and to make editorial changes. The final text of the proposed amended Agreement, with the effective date, will be published after the amended Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the Wyoming Environmental Quality Act, Wyoming Statutes §§ 35–11–2001 through 2004, §§ 35–11–101 *et seq.*, and §§ 16–3–101 *et seq.*, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licenses from the NRC to the State. In a letter dated August 5, 2025, Governor Gordon certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed amended Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the amended Agreement, the license issued by the NRC would continue in effect as a State of Wyoming license until the license expires or is replaced by State-issued license.

(d) The draft staff assessment finds that the Wyoming Department of Environmental Quality’s Source Material Program is adequate to protect public health and safety and is compatible with the NRC’s regulatory program for the regulation of source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content.

Summary of the Draft NRC Staff Assessment of the State of Wyoming’s Program for the Regulation of Source Material

The NRC staff has examined the State of Wyoming’s request for an amended Agreement with respect to the ability of the State’s radiation control program to regulate source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content. The examination was based on the Commission’s Policy Statement, “Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,” (46 FR 7540, January 23, 1981, as amended by Policy Statements

published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA–700, “Processing an Agreement” and its associated Handbook. The Policy Statement has 28 criteria that serve as the basis for the NRC staff’s assessment of the State of Wyoming’s request for an amended Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section. Criteria 9b, 15, and 22 do not apply to the proposed Agreement since Wyoming’s authority will be limited to the regulation of uranium recovery facilities and source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content.

(a) *Organization and Personnel.* The NRC staff reviewed these areas under Criteria 1, 2, 20, and 24 in the draft staff assessment. The State of Wyoming’s proposed amended Agreement program for the regulation of source material is called the “Source Material Program,” and will be located within the Land Quality Division in the Department of Environmental Quality along with the existing Agreement program that regulates uranium recovery facilities.

The educational requirements for the Source Material Program staff are specified in the State of Wyoming’s personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members meet the requirements of a bachelor’s degree in the physical, life science, or engineering; or an equivalent combination of education and experience has been substituted for the degree. All have training and work experience in radiation protection. Supervisory level staff each have at least 20 years of working experience in radiation protection.

The State of Wyoming performed an analysis of the expected workload under the proposed amended Agreement. Based on the NRC staff review of the State of Wyoming’s analysis, the State has an adequate number of staff to regulate source material under the terms of the proposed amended Agreement. The State of Wyoming will employ the equivalent of 3 full-time equivalent professional and technical staff to support the Source Material Program.

The State of Wyoming has indicated that the Source Material Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification

procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Source Material Program staff has accompanied the NRC staff on inspections of the NRC licensee in Wyoming. The Source Material Program staff is also actively supplementing its experience through meetings, discussions, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Source Material Program staff identified by the State of Wyoming to participate in the Agreement program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of source materials.

(b) *Legislation and Regulations.* The NRC staff reviewed these areas under Criteria 1–9a, 10–14, 17, 19, 21, and 23–28 in the draft staff assessment. Wyoming Statutes §§ 35–11–2001 provide the authority to enter into the amended Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Source Material Program. The Department has the requisite authority to promulgate regulations under the Wyoming Statutes §§ 35–11–2002(b) for protection against radiation. Wyoming Statutes §§ 35–11–2003 and 2004 provide the Source Material Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. Wyoming Statute § 35–11–2003(d) requires licensees to provide access to inspectors.

The NRC staff verified that the State of Wyoming adopted by reference the relevant NRC regulations in parts 19, 20, 40, 61, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR) into the Wyoming Source Material Rules and Regulations Chapters 1–9. The State of Wyoming is currently revising its source material regulations to address NRC comments. The revised regulations, expected to be finalized by the end of 2025, were reviewed by NRC staff and address all NRC comments. Therefore, the State of Wyoming will adopt an adequate and compatible set of radiation protection regulations that apply to source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) *Storage and Disposal.* The NRC staff reviewed these areas under Criteria 8, 9a, and 11 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material, including regulations equivalent to the applicable standards contained in 10 CFR part 20, which address the general requirements for waste disposal, and 10 CFR part 61, which addresses waste classification and form. These regulations are applicable to all licensees covered under this proposed amended Agreement.

(d) *Transportation of Radioactive Material.* The NRC staff reviewed this area under Criteria 10 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing source material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting source material.

(e) *Recordkeeping and Incident Reporting.* The NRC staff reviewed this area under Criteria 1 and 11 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials specified in the proposed amended Agreement.

(f) *Evaluation of License Applications.* The NRC staff reviewed this area under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, and 25 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements to obtain a license to possess or use source material. The State of Wyoming has also developed licensing procedures and adopted NRC licensing guides for specific uses of source material for use by the program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The NRC staff reviewed these areas under Criteria 1, 16, 18, 19, and 23 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's source material program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has

also adopted procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The NRC staff reviewed this area under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to ensure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* The NRC staff reviewed this area under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of the active NRC license. Upon the effective date of the amended Agreement, the active NRC license for materials covered by the amended Agreement will be recognized as a Wyoming Department of Environmental Quality license.

The State of Wyoming also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license.

The State of Wyoming regulations in the Source Material Rules and Regulations Chapters 1–9 provide exemptions from the State's requirements for the NRC, and the U.S. Department of Energy contractors or subcontractors. The proposed amended Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed amended Agreement specifies the desirability of reciprocal recognition of licenses and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. Consistent with NRC requirements, the State of Wyoming would be able to recognize the licenses of other jurisdictions by general license, as appropriate.

Staff Conclusion

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed Agreement, and that the State desires to assume regulatory responsibility for such materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed amended Agreement, the certification of Wyoming Governor Gordon, and the supporting information provided by the Source Material Program of the Wyoming Department of Environmental Quality. Based upon this review, the NRC staff concludes that the State of Wyoming source material program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement "Criteria for Guidance of States and

NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement." The NRC staff also concludes that the proposed State of Wyoming source material program to regulate source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content, as comprised of statutes, regulations, procedures, and staffing, is compatible with the Commission's program and is adequate to protect the public health and safety with respect to the materials covered by the proposed amended Agreement. Therefore, the proposed amended Agreement meets the requirements of Section 274 of the AEA.

IV. Executive Order Reviews

Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs has determined that this proposed amendment to Wyoming's Agreement is not a significant regulatory action under E.O. 12866.

E.O. 13132

This action does not have federalism implications, as defined in Executive

Order 13132. It will not significantly limit the rights, roles, and responsibilities of State or local governments.

E.O. 14300

On May 23, 2025, President Donald J. Trump signed E.O. 14300, "Ordering the Reform of the Nuclear Regulatory Commission." Section 5, "Reforming and Modernizing the NRC's Regulations," requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents as guided by the policies set forth in section 2 of the E.O. The NRC is currently in the process of implementing the direction in E.O. 14300. When the NRC finalizes its rules during the implementation of E.O. 14300, the Agreement States will need to update their own regulations, as necessary, to maintain compatibility with the NRC's program within a specific timeframe.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No.
Wyoming Final Application to Amend Agreement, dated August 2025	ML25227A230 (Package).
Wyoming Final Amended Application Supplemental Information	ML25267A041 (Package).
Letter from Governor Mark Gordon, Wyoming, to Chairman Wright requesting amended agreement be established between the NRC and State of Wyoming, dated August 5, 2025.	ML25227A232.
Staff Requirements Memorandum for SECY-23-0075 "Wyoming's Proposal to Amend the Existing Agreement to Regulate the Processing of Source Material to Extract Mineral Resources Other Than the Uranium or Thorium Content," dated September 19, 2023.	ML23262B163.
SECY-23-075 "Wyoming's Proposal to Amend the Existing Agreement to Regulate the Processing of Source Material to Extract Mineral Resources Other Than the Uranium or Thorium Content," dated August 24, 2023.	ML23172A212.
Draft Assessment of the Proposed Wyoming Program	ML25237A057.
State Agreement (SA) 700 "Processing an Agreement," dated June 15, 2022	ML22138A414.
SA-700 Handbook for Processing an Agreement Procedure, dated June 17, 2022	ML22140A396.

Dated: February 2, 2026.

For the Nuclear Regulatory Commission.

Dafna Silberfeld,

Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

Appendix A

An Amended Agreement Between the United States Nuclear Regulatory Commission and the State of Wyoming for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as "the Commission") is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as "the Act"), to enter into an agreement with the Governor of the State of Wyoming (hereinafter referred to as

"the State") providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act, source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities, and source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content; and,

Whereas, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35-11-2001 to enter into this Agreement with the Commission; and,

Whereas, The Commission entered into an Agreement with the State of Wyoming under Section 274 of the Act, which became effective on September 30, 2018 (hereinafter referred to as the "September 30, 2018 Agreement"), and provided for discontinuance of the regulatory authority of the Commission within the State under

Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Section 11e.(2) of the Act, and source materials involved in the extraction or concentration of uranium or thorium in source material and ores at milling facilities; and,

Whereas, The Governor of the State of Wyoming submitted a letter of intent on February 21, 2023, to the Commission to pursue this amended Agreement which would allow the State to assume regulatory authority for source material recovered from any mineral resources processed primarily for purposes other than its uranium or thorium content in addition to the materials covered under the September 30, 2018 Agreement; and,

Whereas, The Governor of the State of Wyoming certified on August 5, 2025, that the State has a program for the control of radiation hazards that is also adequate to protect public health and safety with respect to the materials within the State covered by

this amended Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date], that the program of the State of Wyoming for the regulation of the materials covered by this amended Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

Whereas, The State of Wyoming and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State of Wyoming recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State that this amended Agreement supersedes the September 30, 2018, Agreement as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act;

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as "source material associated with milling activities"); and

C. Source material recovered from any mineral resources processed primarily for purposes other than obtaining the source material content.

Article II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;

2. Byproduct material as defined in Section 11e.(3) of the Act;

3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material except for source material as defined in Article I.B. and I.C. of this Agreement;

5. Special nuclear material;

6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;

7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

8. The regulation of the construction, operation, and decommissioning of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in regulations or orders of the Commission;

11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;

13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,

14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license (License No. SUA-667; Docket No. 040-04492).

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct, source, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to promote the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for: (a) protection against hazards of radiation; and (b) to assure that Commission

and State programs for protection against the hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for: (a) protection against the hazards of radiation; and (b) to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other with the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of Wyoming, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. Pursuant to Section 274j. of the Act, the Commission may, after notifying the Governor, temporarily suspend all or part of this Agreement without notice or hearing if, in the judgment of the Commission, an emergency situation exists with respect to any material covered by this Agreement creating danger which requires immediate action to protect public health and safety of persons either within or outside the State, and the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect the public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the

State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and, such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article X

This Agreement shall supersede the September 30, 2018 Agreement and become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [City, State], in triplicate, this [date] day of [month], [year].

FOR THE UNITED STATES NUCLEAR REGULATORY COMMISSION.

Ho K. Nieh,

Chairman for the U.S. Nuclear Regulatory Commission for the State of Wyoming.

Mark Gordon, Governor.

[FR Doc. 2026-02317 Filed 2-5-26; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control Number (3206-NEW)]

Agency Information Collection Request: OPM E-File System

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public the opportunity to comment on a new information collection request (ICR): OPM E-File System, OMB-Control Number (3206-NEW). As required by the Paperwork Reduction Act of 1995, amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until April 7, 2026.

This process is conducted in accordance with 5 CFR 1320.8(d)(1).

ADDRESSES: You may submit comments on the *Federal Rulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting may be obtained by contacting David Long, Human Resources Solutions, Office of Personnel Management, 1900 E. Street NW, Washington, DC 20415, via phone at 202-606-1918 or via electronic mail to evidence@opm.gov.

SUPPLEMENTARY INFORMATION: OPM adjudicates appeals under a variety of regulations in 5 CFR Chapter I. These include classification appeals (parts 511 and 532), declination of a "reasonable offer" appeals (part 536, subpart D), compensation and leave claims (5 CFR 178 Subpart A), and Fair Labor Standards Act (FLSA) claims (part 551, subpart G). In addition, OPM has proposed regulations to adjudicate appeals of additional types of actions, including probationary and trial period appeals (see 90 FR 61070, Dec. 30, 2025) and suitability action appeals (see today's issue of the **Federal Register**). To facilitate agency processing and tracking of appeals, OPM is creating an electronic filing system by which appellants can create an account and file and track their appeals.

As required by the Paperwork Reduction Act, as amended, 44 U.S.C. 3506(c)(2), OPM is soliciting comments for this collection. The Office of Personnel Management is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

Analysis

Agency: Office of Personnel Management.

Title: OPM E-File System.

OMB Number: 3206–NEW.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 1,380.

Estimated Time per Respondent: 25 minutes.

Total Burden Hours: 575 hours.

Jerson Matias,

Federal Register Liaison, Office of Personnel Management.

[FR Doc. 2026–02445 Filed 2–5–26; 8:45 am]

BILLING CODE 6325–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–161 and K2026–161; MC2026–162 and K2026–162]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 11, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related

to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. See 39 CFR 3041.110(n); 39 CFR 3041.205(a).

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s):* MC2026–161 and K2026–161; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1487 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 3, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* February 11, 2026.

2. *Docket No(s):* MC2026–162 and K2026–162; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1488 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 3, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* February 11, 2026.

III. Summary Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Sarah Wessel,

Alternate Federal Register Liaison.

[FR Doc. 2026–02439 Filed 2–5–26; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., February 12, 2026.

PLACE: Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to SecretarytotheBoard@rrb.gov.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Legislative update—Office of Legislative Affairs.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, (312) 751–4920.

Authority: 5 U.S.C. 552b.

Dated: February 3, 2026.

Sarah Kreydich,

Administrative Specialist.

[FR Doc. 2026–02312 Filed 2–4–26; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104762; File No. 600–45]

ICE Clear Credit LLC; Order Granting an Application for Registration as a Clearing Agency Under Section 17A of the Securities Exchange Act of 1934

January 30, 2026.

I. Introduction

On August 1, 2025, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) an application on Form CA–1 (“Application”) under Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”)¹ seeking to register as a clearing agency to provide central counterparty (“CCP”) services for transactions involving U.S. Treasury securities, which ICC refers to as its “Treasury Business.” Such services would be provided by ICC, the same entity that is already deemed registered as a clearing agency with respect to other services.² Notice of the

Application was published for comment in the **Federal Register** on August 21, 2025.³ On November 18, 2025, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Exchange Act to determine whether to grant or deny the Application.⁴

The Commission received comment letters, as well as a response letter from ICC.⁵ The comment letters generally supported the expansion of access to the clearing of transactions in U.S. Treasury securities through the approval of new clearing agencies, including ICC, but also expressed concerns with the Application and recommended certain changes. The comment letters received, and ICC’s response letter thereto, are discussed in Part III.

This order grants ICC’s Application for registration as a clearing agency for the reasons set forth in Part III below.

II. Statutory Standard for Registration as a Clearing Agency

Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions,⁶ including providing the services of a CCP.⁷ Pursuant to Section 17A of the Exchange Act and Rule 17Ab2–1 thereunder, an entity that meets the definition of a clearing agency must register with the Commission (or obtain from the Commission an exemption from registration prior to performing the functions of a clearing agency).⁸ In addition to the requirements set forth in Rule 17Ab2–1, Section 19(a)(1) of the Exchange Act establishes the standard for Commission review of an application for registration as a clearing agency. Pursuant thereto, the Commission shall grant registration of a clearing agency if it finds that the

requirements of the Exchange Act and the rules and regulations thereunder with respect to the applicant are satisfied.⁹ The Commission shall deny such registration if it does not make such finding.¹⁰

The requirements of the Exchange Act applicable to clearing agencies are set forth in Section 17A of the Exchange Act and the rules and regulations thereunder.¹¹ Accordingly, to grant ICC’s Application for registration as a clearing agency, the Commission must find that the Application satisfies the requirements of Section 17A(b) of the Exchange Act and rules and regulations thereunder, including the determinations set forth in paragraphs (A) through (I) of Section 17A(b)(3) of the Exchange Act.¹²

After a clearing agency’s application for registration is granted, the clearing agency must continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder. The Commission has explained that “[a]n approval of clearing agency registration does not mean that no further modifications of the applicant’s rules, systems, procedures, or practices are needed.”¹³ Rather, the Commission stated that a registered clearing agency’s obligation to continue to satisfy the requirements of the Exchange Act and the rules and regulations thereunder means that “[t]he self-regulatory obligations of [a] fully registered clearing agency cannot end” after registration.¹⁴ To ensure such compliance, the Commission stated that it “will continue to use its oversight, inspection, and enforcement authority

¹ 15 U.S.C. 78q–1.

² ICC started in 2009 as ICE Trust U.S. and was regulated as a bank by the New York State Banking Department and the Federal Reserve Board of Governors. In 2011, ICC converted to a Delaware limited liability company and changed its name to ICE Clear Credit LLC. On July 16, 2011, pursuant to Section 17A(l) of the Exchange Act, ICC was deemed registered with the Commission as a clearing agency solely for the purpose of clearing security-based swaps. Since then, ICC has been operating an ongoing business related to the clearance of credit-default swaps (“CDS”), which ICC refers to as its “CDS Business.” Although the Application pertains to ICC’s proposed Treasury Business, the Application also contains information about the CDS Business, and where relevant, this Order refers to information pertaining to ICC’s existing CDS Business, including referring to ICC’s existing, publicly available disclosure framework regarding the CDS Business (the “Disclosure Framework”). See ICC Disclosure Framework, https://www.ice.com/publicdocs/clear_credit/ICCClearCreditDisclosureFramework.pdf. References in this Order to the CDS Business are made to the extent relevant to the Application, for instance with respect to issues that pertain to ICC as an entity. As described in the Application, the Treasury Business would be distinct from ICC’s existing CDS Business, having separate membership requirements, financial risk management and default waterfalls, and rulebooks. See Exhibit J of the Application. If ICC determines in the future to provide clearing agency services other than its Treasury Business or CDS Business, or to perform the functions of a clearing agency for transactions in other types of securities, ICC would need to amend its application on Form CA–1 to so reflect and submit any related proposed rule changes as required under Section 19(b) of the Exchange Act.

Capitalized terms not otherwise defined in this order are defined in the Application.

³ Release No. 34–103727 (Aug. 18, 2025), 90 FR 40879 (Aug. 21, 2025) (“Notice”). Non-confidential aspects of the Application, including any exhibits thereto cited in this order, are available on the Commission’s website at: <https://www.sec.gov/rules-regulations/commission-orders-notices/icc-form-ca-1>.

⁴ Release No. 34–104195 (Nov. 18, 2025), 90 FR 52752 (Nov. 21, 2025).

⁵ The public comment file for the Application is available on the Commission’s website at: <https://www.sec.gov/comments/600-45/600-45.htm>.

⁶ 15 U.S.C. 78c(a)(23)(A) (providing the definition of “clearing agency”); see also Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786, 70897 (Oct 13, 2016) (“CCA Standards Adopting Release”) (stating that clearing agencies are broadly defined in the Exchange Act and undertake a variety of functions).

⁷ See 17 CFR 240.17ad–22(a)(2) (defining “central counterparty” as a clearing agency that interposes itself between counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer).

⁸ 15 U.S.C. 78q–1(b); 17 CFR 240.17ab2–1 (“Rule 17Ab2–1”).

⁹ 15 U.S.C. 78q–1; 15 U.S.C. 78s(a)(1).

¹⁰ 15 U.S.C. 78s(a)(1).

¹¹ Rules for registered clearing agencies include recordkeeping requirements, 17 CFR 240.17a–1; the filing process for proposed rule changes, 17 CFR 240.19b–4; rules addressing operations and risk management, governance and conflicts of interest, and plans for recovery and wind-down at, respectively, 17 CFR 240.17ad–22 (“Rule 17Ad–22”), 240.17ad–25 (“Rule 17Ad–25”), and 240.17ad–26 (“Rule 17Ad–26”); and the requirements set forth in Regulation Systems Compliance and Integrity, 17 CFR 242.1000 *et seq.* (“Regulation SCI”). The Commission conducts ongoing monitoring of registered clearing agencies through its supervisory program for registered clearing agencies. The Commission also assesses compliance with Commission rules by conducting examinations and investigations. See 15 U.S.C. 78q(b); 15 U.S.C. 78u(a).

¹² 15 U.S.C. 78s(a); 15 U.S.C. 78q–1(b)(3)(A)–(I). The determinations are described further below.

¹³ See Release No. 34–69838 (June 24, 2013), 78 FR 39027, 39029 (June 28, 2013) (approving an application by the Fixed Income Clearing Corporation for permanent registration as a clearing agency).

¹⁴ See Release No. 34–20221 (Sept. 23, 1983), 48 FR 45167, 45171 (Oct. 3, 1983) (approving nine applications for permanent registration as a clearing agency).

as necessary and appropriate to further the purposes of the [Exchange] Act.”¹⁵

III. Review of Application Under Statutory Standard for Registration

Consistent with the requirements in Sections 17A and 19(a)(1) of the Exchange Act described above, the Commission below discusses how the Application satisfies each of the statutory requirements to be registered as a clearing agency.¹⁶

A. Organization and Capacity

1. Statutory Standard: Section 17A(b)(3)(A)

Section 17A(b)(3)(A) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Exchange Act) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of Section 17A of the Exchange Act.¹⁷

Consistent with this standard, the Commission does not assess in this order whether ICC's ultimate implementation of the rules, policies, and procedures set forth in its Application with respect to the Treasury Business will comply with each of the Commission's rules for clearing agencies, as ICC is not yet operating as a clearing agency for its Treasury Business.¹⁸ Rather, the Commission assesses whether ICC is *so organized* and *has the capacity* to comply with the provisions of the Exchange Act and the

rules and regulations thereunder,¹⁹ by analyzing ICC's organization and governance, as well as its operational arrangements.²⁰ Under this standard, the registration of a clearing agency “depends on a prediction about compliance with the law.”²¹ Section 17A assumes that “an applicant would produce a business plan that, if faithfully executed, would comply” with the Exchange Act.²² To make its required statutory determination under Section 17A(b)(3)(A), the Commission must “find[] that the applicant is *able* and *likely* to comply,” and upon registration and commencement of operations as a registered clearing agency, compliance with Section 17A(b)(3)(A) “is likely to be carried out.”²³

2. Summary of Proposed Operations

The following is an overview of ICC's proposed clearing agency operations for its Treasury Business.

(a) Types of Transactions Accepted for Clearing

As described in Exhibit J, ICC will accept for clearing transactions involving U.S. Treasury securities including (i) transactions in repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities to which a Treasury Participant²⁴ of ICC is a counterparty,

¹⁹ With respect to ICC's ability to safeguard securities and funds for which it is responsible, the Commission addresses that topic in Part III.E, in conjunction with discussing Section 17A(b)(3)(F) of the Exchange Act, which requires, among other things, that the rules of the clearing agency are designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. With respect to ICC's ability to enforce compliance by its participants with the rules of the clearing agency, the Commission addresses that topic in Part III.F in conjunction with discussing Section 17A(b)(3)(G) of the Exchange Act, which requires that the rules of the clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency.

²⁰ In Part III.E, the Commission further analyzes ICC's capacity to conduct risk management consistent with the statutory requirements for safeguarding securities and funds set forth in Section 17A(b)(3)(F) of the Exchange Act.

²¹ *Bd. of Trade of City of Chicago v. SEC.*, 883 F.2d 525, 533 (7th Cir. 1989) (vacating Delta Government Options Corporation (“Delta”)’s temporary registration as a clearing agency and remanding to the Commission to decide whether Delta’s proprietary trading system would operate as an unregistered national securities exchange in violation of Sections 5 and 6 of the Exchange Act).

²² *Id.* at 533–34.

²³ *Id.* at 534 (emphasis in original).

²⁴ A Treasury Participant is a member of ICC participating in the Treasury Business. More specifically, a Treasury Participant is a person who has: (i) been approved by ICC for the submission of transactions involving U.S. Treasury securities; (ii) entered into an agreement with ICC specifically

and (iii) purchases and sales of U.S. Treasury securities (a) by a Treasury Participant of ICC resulting from the Treasury Participant's operation of a trading facility on which it becomes the counterparty to both the buyer and seller for transactions executed on the platform, and (b) between a Treasury Participant of ICC and a registered broker-dealer or a government securities dealer or broker.²⁵

ICC will accept transactions directly from electronic trading venues on which they are executed. For transactions not executed on trading venues, such as those executed by voice, Treasury Participants also can submit those transactions to ICC. Transactions are submitted to ICC through ICE Link.²⁶

According to Exhibit J, ICC accepts Trades²⁷ pursuant to Rule 309 of the ICC Treasury Clearing Rules (the “Treasury Rules”).²⁸ As described in that rule, ICC shall accept for clearance all transactions that are submitted in accordance with, and meet the requirements established by, ICC's rules and procedures, including implementation of and compliance with applicable risk filters required by ICC based on ICC's internal risk rating for the Treasury Participant and evaluation of the risk of the Treasury Participant's existing and proposed Trades. ICC's criteria for accepting Trades will be non-discriminatory across trading venues.²⁹ Any Trade not accepted by ICC for clearing will be rejected. ICC will accept or reject Trades submitted for clearance promptly after submission to ICC, and within any timeframe required under Rule 17Ad–22 or any related regulatory interpretation.³⁰

(b) Novation

Following acceptance by ICC in accordance with Treasury Rule 309, the existing Trade is extinguished, and the two Treasury Participants are deemed to have each entered into an exactly offsetting transaction with ICC. With respect to each such Treasury

relating to such transactions; and (iii) agreed to abide by ICC's rules and procedures related to such transactions. Notice, 90 FR at 40880.

²⁵ See Exhibit J of the Application, at 2.

²⁶ See *id.*, at 8. As described in Exhibit J, ICE Link is ICC's connectivity network and is a post-trade matching and affirmation platform. ICE Link supports transactions executed on trading venues, transactions executed by voice that are submitted to ICE Link for matching and submission to clearing, bunched trades and allocations, and customer transfers. See Exhibit J of the Application, at 8, n.3.

²⁷ The term “Trades” means transactions in contracts that are cleared by ICC's Treasury Business. See Treasury Rule 102. The Treasury Rules are Annex E–2 to the Application.

²⁸ See Exhibit J of the Application, at 8.

²⁹ See Treasury Rule 309(e).

³⁰ See *id.*

¹⁵ *Id.*

¹⁶ See 15 U.S.C. 78q–1(b)(3)(A)–(I) (describing the statutory determinations that the Commission must make regarding the rules and structure of a clearing agency to grant registration). In 1980, the Commission published a statement of the views and positions of Commission staff regarding the requirements of Section 17A. See Release No. 34–16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

¹⁷ 15 U.S.C. 78q–1(b)(3)(A).

¹⁸ See *supra* notes 13–14 and accompanying text (explaining that approval of clearing agency registration does not mean that no further modifications of the applicant's rules, systems, procedures, or practices are needed and that the obligations of a fully registered clearing agency cannot end after registration).

Participant, its position in such transaction shall become an Open Position. Trades may also be matched and submitted for the same entity, in which case, such entity will be deemed to have entered into two separate and distinct transactions with ICC.³¹

As described in Exhibit J, ICC will require that any Trade submitted to it for clearing be identified as either a Trade for a Treasury Participant (a "House Position") or a Trade for a Non-Participant Party for whom the Treasury Participant is clearing transactions at ICC (a "Client" and a "Client-Related Position").³² Trade submissions for Client-Related Positions will indicate the Treasury Participant that is the clearing broker for the Trade and the Treasury Participant that is the executing party for the Trade. ICC will record the Client-Related Position in the relevant Client account of the Treasury Participant acting as the clearing broker for the Trade. If a trade submission indicates that the Treasury Participant acting as the clearing broker is also the executing party to the Trade, ICC will record the Treasury Participant's leg as a House Position for that Treasury Participant. If a trade submission indicates that a Treasury Participant is the clearing broker while a different Treasury Participant is the executing party, ICC will (i) record the Client-Related Position in the relevant Client account of the Treasury Participant acting as the clearing broker for the Trade, and (ii) record the Treasury Participant's leg as a House Position for the other Treasury Participant acting as executing party to the Trade.³³

(c) Settlement Process

In Exhibit J, ICC describes its ability to settle transactions. For each business day, ICC will calculate net settlement obligations for each specific issue of Treasury security (identified by its CUSIP) for which settlement of transactions therein is to occur on such day. A Treasury Participant settles with ICC the net deliver/receive obligation resulting from (i) its own House Positions and (ii) its Client-Related Positions from its Clients that have elected to settle with ICC through the Treasury Participant. A Client may, in coordination with the Treasury Participant through which it clears, elect to settle with ICC through that Treasury Participant or settle directly with ICC.³⁴ Regardless of who is settling

with ICC (Treasury Participant or Client), all securities and cash are exchanged on a delivery-versus-payment/receive-versus-payment basis, and obligations settle at the ICC end-of-day price, with a separate Variation Payment to align net cashflows with the trade price.³⁵

(d) Approach to Settlement Fails

Exhibit J describes the steps ICC will follow in the case of a settlement failure. If there is a failure to deliver a Settling Security, ICC is not required to deliver the Settling Security, and the party that was supposed to receive the Settling Security is not required to pay for it. The party that failed to deliver will be required to deliver on the next ICC Settlement Day. That party also will be obligated to pay ICC a Fail Charge in an amount determined by ICC, and ICC will be obligated to provide a corresponding Fail Charge payment to the party that was supposed to receive the Settling Security. If ICC incurs any actual costs or expenses in the settlement process from the failure to deliver a Settling Security, the party that failed to deliver also will be obligated to reimburse ICC for any of those charges.³⁶

If the party set to receive a Settling Security fails to pay for that security, ICC still may determine to accept delivery of the Settling Security. In this case, the party that was supposed to receive the Settling Security (but failed to pay for it) will be required to pay ICC any losses, costs and expenses, including financing costs, incurred by ICC in accepting the security and liquidating any security received. Alternatively, ICC can also fully terminate the Net Settlement Obligation and replace the Net Settlement Obligation with an obligation to cash settle based on the price determined by ICC. Under both circumstances, ICC can apply Initial Margin provided by the failing party to settle any amounts owed.³⁷

Accounts are established by Treasury Participants for the settlement of Net Settlement Obligations in respect of House Positions, CP Client Delivery Settlement Accounts are established by Treasury Participants for the settlement of Net Settlement Obligations in respect of Client-Related Positions (other than those to be settled through Individual Client Direct Settlement Accounts), and Individual Client Direct Settlement Accounts are established by Non-Participant Parties of Treasury Participants for the direct settlement of Net Settlement Obligations in respect of Client-Related Positions in its Non-Participant Party Portfolio.

³⁵ See Exhibit J of the Application, at 10–11.

³⁶ See *id.*, at 11.

³⁷ See *id.*

(e) Default Management

Pursuant to the Treasury Rules, upon ICC's determination that a Treasury Participant is in Default,³⁸ ICC must provide notice of the Default, including the identity of the defaulting participant, as soon as reasonably practicable to the other Treasury Participants and the public.³⁹ Treasury Rule 20–605(d) provides that ICC may hedge open positions of the defaulter.⁴⁰ ICC also may initiate the Closing-out Process with respect to the defaulting Treasury Participant.⁴¹ The Closing-out Process includes the immediate termination of all of such defaulting Treasury Participant's Open Positions and then the satisfaction of any Reimbursement Obligations by the defaulting Treasury Participant, for which ICC can apply the Margin and other assets provided by the defaulting Treasury Participant based on the waterfall set forth in Treasury Rule 20–605(c).

Regarding margin, ICC will collect Initial Margin for both House Positions and Client-Related Positions. As described in Exhibit J, and as further set out in Treasury Rule 401(b), each Treasury Participant is responsible for ensuring that Margin is met for its Client-Related Positions and transferring to ICC cash or other collateral needed to meet such Margin requirement. Clients may choose between net or gross margin position accounts, as described further in Exhibit J.⁴² These accounts allow a Client to choose whether to fund all, some, or none of its Margin requirement. ICC will maintain Client-funded Client Margin in separate, legally segregated, margin accounts from House-funded Client Margin or House

³⁸ ICC may determine that a Treasury Participant is in Default if the Treasury Participant or guarantor, among other things, (i) fails to meet any membership obligations, (ii) is in breach of the terms of membership or is suspended, or (iii) is terminated, suspended or has certain clearing privileges revoked pursuant to Treasury Rule 615(b). See Exhibit J of the Application, at 6.

³⁹ Treasury Rule 20–605(b).

⁴⁰ Treasury Rule 20–605(d).

⁴¹ Treasury Rule 20–605(a). As defined in Treasury Rule 102, "Closing-out Process" means, in connection with the Default of a Treasury Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral, and application of Post-Default Portability Rules pursuant to Treasury Rule 20A–02, if applicable.

⁴² Specifically, depending on the agreement between the Treasury Participant and its related Non-Participant parties, margin or collateral associated with the relevant Client-Related Positions may be held in one of four different type of accounts: (i) Client-Funded Gross IM Accounts, (ii) Clearing Participant-Funded Gross IM Accounts, (iii) Hybrid Gross IM Accounts, and (iv) Net Client IM Accounts.

³¹ See Exhibit J of the Application, at 8.

³² See Exhibit J of the Application, at 8–9 (describing "done with" and "done away" trading).

³³ See *id.*, at 8–9.

³⁴ Specifically, pursuant to Chapter 22 of the Treasury Rules, CP House Delivery Settlement

Margin. Finally, ICC will determine Margin for each Treasury Participant in respect to its House Positions and in respect of any applicable Client-Related Positions, following the close of business on each ICE Business Day, based on 99% Value-at-Risk equivalent risk measures with additional liquidity and concentration requirements.⁴³

With respect to safeguarding securities and funds in its custody or control or for which it is responsible, as described in Exhibit L, ICC safeguards its own assets, and the assets of Treasury Participants and their Clients. ICC does so by using only approved settlement banks, custodians, and other financial service providers that ICC has chosen based on their ability to provide the services required by ICC, creditworthiness, relevant experience and operational stability. ICC conducts due diligence reviews to assess whether its settlement banks and custodians employ adequate accounting practices, safekeeping procedures and internal controls that protect deposits, ensure full segregation and protection of financial instruments, and allow ICC prompt access to assets when required. In addition, ICC monitors the financial health of the financial institutions in which it holds its settlement and custodial accounts on an on-going basis, with an emphasis on measures related to liquidity and cash management.⁴⁴

With respect to U.S. Dollar and U.S. Treasury securities collateral posted by participants in the CDS Business, to the fullest extent available, ICC holds such cash and U.S. Treasury securities at its accounts with the Federal Reserve Bank of Chicago.⁴⁵ For the Treasury Business, ICC will use four different accounts to legally segregate House collateral, Client-related collateral, and variation payments. ICC will hold collateral either in a bank deposit at a commercial bank or invest the collateral using reverse repurchase agreements backed by certain U.S. Treasury securities.

(f) Business Continuity Practices

In Exhibit K, ICC describes how it provides for the security of the systems that ICC uses to perform the functions of a clearing agency. ICC does this through the application of the Corporate Information Security Policy ("CISP"). The CISP describes the information security policies for the creation, transfer and storage of sensitive data applicable to all users at ICC. The CISP covers areas such as access to data; remote access to networks; protection of

data; network security; and security testing.⁴⁶

In addition to information security, ICC also provides for business continuity and disaster recovery. Moreover, ICC states that it has a comprehensive business continuity and disaster recovery program that supports the continued performance of critical functions in the event ICC's headquarters or primary data center is unavailable due to significant business interruption.⁴⁷ Maintaining the continued performance of critical functions in the event ICC's headquarters or primary data center is unavailable due to significant business interruption, should help ensure that ICC is able to facilitate the prompt and accurate clearance and settlement of securities transactions even during the loss of its headquarters or primary data center.⁴⁸

3. Organization, Governance, and Analysis

ICC is a Delaware limited liability company, which is wholly owned by ICE US Holding Company, L.P. ("Parent").⁴⁹ While Parent is ICC's direct shareholder, ICC's ultimate parent company is Intercontinental Exchange, Inc. ("ICE"). Under this structure, ICC's ultimate parent company, ICE, provides services to ICC, such as services related to IT.⁵⁰ ICC is managed by a Board of

Managers ("Board") consisting of nine members,⁵¹ along with specialized committees of the Board, including the ICC Audit Committee, ICC Nominating Committee, and ICC Risk Committee.⁵² Each Board committee has a written charter that lays out the membership structure and responsibilities of that committee.⁵³

As noted, ICC intends to conduct the Treasury Business within the same legal entity—ICC—that is currently conducting ICC's existing CDS Business. Accordingly, ICC's existing organization, governance, and disclosure framework for the CDS Business will also apply to the Treasury Business. With respect to organization and governance, ICC is a Delaware limited liability company.⁵⁴ As described above and in Exhibit A of the Application, the Parent, ICE, ICC's Board of Managers, CDS Risk Committee, Treasury Risk Committee, and executives, are the persons who will direct the management and policies of ICC, including in connection with the Treasury Business.⁵⁵ The ICC Board has full responsibility for the operations of ICC and approves ICC's initiatives without any requirements for approval from Parent or ICE.⁵⁶ Moreover, at least a majority of ICC's Board consists of independent directors.⁵⁷

In addition to the Board, ICC's Board committees and non-Board committees are also involved in ICC's governance and risk management. For example, the ICC Board Risk Committee is a Board level committee that assists the ICC Board in fulfilling its oversight responsibilities with respect to risk management of ICC.⁵⁸ In particular, the

regulated subsidiaries"); Exhibit I of the Application ("ICC receives certain clearing services from ICE under the Administrative Services Agreement dated July 1, 2025 by and between Intercontinental Exchange Holdings, Inc. and ICC and the Amended and Restated Clearing Settlement Services Agreement dated October 15, 2018 by and between Intercontinental Exchange Holdings, Inc. and ICC").

⁵¹ See Exhibit B of the Application.

⁵² See Exhibit C of the Application.

⁵³ ICC submitted these charters as confidential annexes to the Application.

⁵⁴ See Exhibit C of the Application.

⁵⁵ See Exhibit A of the Application. As noted in Exhibit A, the CDS Risk Committee and the Treasury Risk Committee each have certain consultation rights as set forth in Rule 502 of the CDS Rule Book and Rule 502 of the Treasury Rule Book.

⁵⁶ See ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf. As part of the Application, ICC also submitted confidentially the relevant Board committee charters, which are consistent with the ICC Disclosure Framework.

⁵⁷ See *id.*

⁵⁸ See *id.*

⁴³ See Exhibit J of the Application, at 3.

⁴⁴ See Exhibit L of the Application, at 1.

⁴⁵ See *id.*

⁴⁶ See ICC Disclosure Framework, Principle 17, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

⁴⁷ See Exhibit C of the Application.

⁴⁸ See Exhibit K of the Application, at 1 (stating that "ICE operates various systems on behalf of its

ICC Board Risk Committee oversees (i) risk management models, systems, and processes used to identify and manage systemic, market, credit, and liquidity risks at ICC and (ii) matters that could materially affect the risk profile of ICC. The ICC Board Risk Committee consists of at least five Board members, a majority of which meet ICC's independence requirements, and includes Board members that are representatives of ICC's Clearing Participants.⁵⁹ The ICC Nominating Committee assists the Board in (i) identifying and attracting highly qualified individuals to serve as Board members; (ii) evaluating the individuals nominated to the Board by the non-Board risk committees; and (iii) evaluating and providing recommendations to the Board on whether Board members qualify as independent under ICC's Independence Requirements.⁶⁰ Finally, the ICC Audit Committee provides the Board with an independent opinion and makes recommendations on matters of importance to ICC's financial condition; financial information, policies, practices, systems and controls; legal and regulatory compliance relating to financial matters; and business ethics.⁶¹

Moreover, ICC's non-Board level risk committees are also involved in ICC's governance and risk management. The Treasury Rules establish a Treasury Risk Committee, which includes representatives from Treasury Participants and non-participants. Pursuant to Treasury Rule 502, ICC shall not take, or permit to be taken, certain actions without consulting the Treasury Risk Committee. Such actions include, among other things, modifying the Treasury Rules with respect to clearing new or existing Contracts, modifying provisions related to margin, and modifying provisions related to the Treasury Guaranty Fund.⁶² Finally, pursuant to Treasury Rule 508(a), effective as of the Treasury Governance Commencement Date, the Treasury Risk Committee will have authority to

designate to ICC's Parent two members for election to the Board.⁶³

Use of the ICC Board Risk Committee and non-Board risk committees supports ICC's Application meeting the statutory standard in Section 17A(b)(3)(A). Such committees will help ensure that ICC has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions because the committees will help identify and manage risks that, if not properly managed, could impede ICC's ability to clear transactions. Moreover, the other Board committees mentioned above—Audit and Nominating have distinguishable areas of focus and are designed to operate within the larger corporate framework, which is another way that ICC meets the statutory standard in Section 17A(b)(3)(A) and complies with the Exchange Act and rules and regulations thereunder.⁶⁴

ICC's governance arrangements include a process for classifying certain directors as independent. Five members of the Board are appointed by the Parent, and three of those are required to be independent.⁶⁵ An additional four

members of the Board are currently nominated by the CDS Risk Committee, and two of those are required to be independent.⁶⁶ As described above, after the Treasury Governance Commencement Date, the Treasury Risk Committee will nominate two of these managers. The ICC Nominating Committee evaluates and recommends to the Board if each Manager, and any nominee for Manager, qualifies as independent under ICC's Independence Standards.⁶⁷ These independence standards are intended to be consistent with the NYSE Listing Standards, ICE's Board of Director Governance Principles, and the applicable provisions and rules of the Exchange Act.⁶⁸ Independent directors help promote the ability of the Board to perform its oversight of management function at ICC and support a plurality of viewpoints voiced at the Board level,⁶⁹ which should help ensure the effective management of ICC and that ICC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(A).

With respect to its operational arrangements and capacity to facilitate prompt and accurate clearance and settlement, as generally described in Part III.A.2 above, ICC's systems and processes will enable trade submission, matching, novation, netting, settlement and settlement fails management, and promote data security and business continuity. ICC's rules, policies and procedures include governance processes that support and oversee these clearing agency operations. These governance processes demonstrate that ICC is so organized and has the capacity to facilitate prompt and accurate clearance and settlement and to comply with the Exchange Act and rules and regulations thereunder. For example, the ICC Chief Compliance Officer has an

⁶³ See Treasury Rule 508(a). One of the persons selected must satisfy ICC's Independence Requirements. The "Treasury Governance Commencement Date" is defined in ICC's Operating Agreement. It means the date of the first annual Board election occurring after the Treasury Business accounts for a specified percentage of ICC's revenue and ICC has obtained a specified percentage of the overall market share for Treasury clearing. Specifically, it is the date of the first annual election of managers that occurs after the first two consecutive calendar quarters following June 30, 2026, in which (a) the aggregate transaction-based revenue of the Treasury Business in each quarter is at least twenty percent (20%) of the aggregate transaction-based revenue of ICC in such quarter and (b) the arithmetic average of (i) the Treasury Clearing Market Share for the first such calendar quarter and (ii) the Treasury Clearing Market Share for the second such calendar quarter is greater than or equal to ten percent (10%). Treasury Clearing Market Share means, for a specified period, a fraction (expressed as a percentage), the numerator of which is the publicly reported aggregate notional value of transactions involving U.S. Treasury securities cleared by ICC in such period, and the denominator of which is the publicly reported aggregate notional value of transactions involving U.S. Treasury securities cleared by all Treasury CCPs in such period. After the Treasury Governance Commencement Date, the Treasury Risk Committee will designate two managers for election to the Board, including an independent manager. ICC's existing CDS Risk Committee, which includes representatives from Participants and non-participants, currently designates four managers for election to the Board. After the Treasury Governance Commencement Date, the overall number of managers designated by ICC participants and non-participants will remain at four (of nine), with the selection split between the two non-Board risk committees.

⁶⁴ See *supra* note 11 (summarizing the Commission rules applicable to registered clearing agencies).

⁶⁵ See ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

⁶⁶ See ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

⁶⁷ See *id.*; see also Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Governance Playbook and Seventh Amended and Restated Operating Agreement, Release No. 34-101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (SR-ICC-2024-010).

⁶⁸ See ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

⁶⁹ See Clearing Agency Governance and Conflicts of Interest, Release No. 34-98959 (Nov. 16, 2023), 88 FR 84454, 84457 (Dec. 5, 2023) ("Clearing Agency Governance Release") ("requiring a certain percentage of independent directors helps promote the ability of the board to perform its oversight of management function and to support a plurality of viewpoints voiced at the board level.").

⁵⁹ See *id.*

⁶⁰ The ICC Nominating Committee consists of at least three Board members, a majority of whom meet ICC's independence requirements. See ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

⁶¹ The ICC Audit Committee consists of at least three Board members, all of whom meet ICC's independence requirements. See ICC Disclosure Framework, Principle 2, https://www.ice.com/publicdocs/clear_credit/ICEClearCredit_DisclosureFramework.pdf.

⁶² See Treasury Rule 502.

additional reporting line to the Board of Managers, and the ICC Chief Risk Officer has an additional reporting line to the Chairperson of the ICC Treasury Risk Committee.⁷⁰ These elements of the Application demonstrate that ICC will have multiple reporting channels for the oversight of legal and regulatory compliance.

Additionally, as described above and in Exhibit L of the Application, ICC has in place safeguards for its own assets, and the assets of Treasury Participants and their Clients.⁷¹ For example, ICC uses only approved settlement banks, custodians, and other financial service providers that ICC has chosen based on their ability to provide the services required by ICC, creditworthiness, relevant experience, and operational stability. ICC conducts due diligence on these service providers and monitors their financial health on an on-going basis. Moreover, ICC currently holds cash and U.S. Treasury securities from its CDS Business at its accounts with the Federal Reserve Bank of Chicago. For the Treasury Business, ICC will use four different accounts to legally segregate house collateral, client-related collateral, and variation payments. These practices demonstrate that ICC is so organized and has the capacity to safeguard securities and funds in its custody or control or for which it is responsible.

Finally, the ICC Chief Compliance Officer has an additional reporting line directly to the ICC Board, and the ICC Chief Risk Officer has an additional reporting line directly to the Chairperson of the ICC Risk Committee, who also is a non-executive manager on the ICC Board.⁷² Having multiple personnel, layers of review and reporting, and the ability to access additional resources in order to proactively manage its risks is one way ICC demonstrates it is so organized and has the capacity to comply with the provisions of the Exchange Act and the rules and regulations thereunder.⁷³

For the reasons discussed above, the Commission determines that ICC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions, to safeguard securities and funds in its custody or control or for which it is responsible, and to comply with the provisions of

the Exchange Act and the rules and regulations thereunder.

B. Participation Standards

1. Statutory Standard and Analysis: Section 17A(b)(3)(B)

Section 17A(b)(3)(B) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system or the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.⁷⁴ Section 3(a)(24) of the Exchange Act defines a “participant” with respect to a clearing agency as any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities, and further states that the term does not include a person whose only use of a clearing agency is (i) through another person who is a participant or (ii) as a pledgee of securities.⁷⁵

Treasury Rule 102 defines Treasury Participant as a person that has been approved by ICC for the submission of Contracts in the Treasury Clearing Service and that is party to an agreement with ICC specifically relating to transactions in such Contracts. Treasury Rule 201(b) states that Treasury Participants must meet and maintain such standards of business integrity, financial capacity, creditworthiness, operational capability, experience and competence as may be established by ICE Clear Credit from time to time and that no person shall be admitted as a Treasury Participant or be permitted to remain as a Treasury Participant unless, in ICC’s determination, the person meets the standards set out in Treasury Rule 201(b). Treasury Rule 201(c) further states that, for the avoidance of doubt, and without limiting Treasury Rule 201(b), the following categories of persons may be approved by ICC as Treasury Participants, provided that such applicant meets and maintains the applicable standards for participation set forth in Treasury Rule 201(b): (i) registered broker-dealer; (ii) registered

investment company; (iii) bank; (iv) insurance company; or (v) such other person or class of persons that the SEC may designate as appropriate.⁷⁶ The Treasury Rules distinguish a Treasury Participant from a Non-Participant Party, which is defined as a person that is not ICC or a Treasury Participant.⁷⁷ Non-Participant Parties may include, without limitation, an Affiliate of a Participant.⁷⁸

The Commission finds that Treasury Rule 201 provides for all the categories of persons listed in Section 17A(b)(3)(B), including clearing agencies, to become participants. Treasury Rules 201(a) and 201(b) do not limit the type of person who can become a Treasury Participant, as long as that person meets ICC’s standards.⁷⁹ While the categories of persons listed in part (c) of Treasury Rule 201 do not explicitly include clearing agencies, it is clear from the rule itself that the list is not intended to be exclusive, as it states, “without limiting Section 201(b).” Consistent with this reading of Treasury Rule 201, ICE Clear Credit stated in its letter that Treasury Rule 201(c) “is a non-exclusive list of the types of entities that ICC may approve as a Treasury Participants (provided that they meet and maintain the ICC participation standards set out in Treasury Rule 201(b)).”⁸⁰ Because Rule 201(c) does not limit Rule 201(b), and because Rule 201(b) does not limit the type of person that may become a Treasury Participant, registered clearing agencies could become Treasury Participants, and accordingly, the Commission finds that the Application satisfies the requirements of Section 17A(b)(3)(B) of the Exchange Act.

One commenter recommended that ICC explicitly permit Futures

⁷⁶ Treasury Rule 201(c). See Annex E-2 of the Application. Treasury Rule 201(c) is identical to ICC’s existing CDS Rule 201(c).

⁷⁷ Treasury Rule 102.

⁷⁸ *Id.*

⁷⁹ Treasury Rule 201(a) provides that ICC “shall determine whether any applicant for status as a Treasury Participant, or any existing Treasury Participant, satisfies the qualifications established by” ICC and only those persons found by ICC “to be so qualified shall be permitted to become or remain, as applicable, Treasury Participants.” Treasury Rule 201(b) sets out certain standards that an applicant for admission as Treasury Participant, and any existing Treasury Participant on an ongoing basis, must satisfy. Among other things, Treasury Participants and applicants must maintain a minimum of \$50 million of Adjusted Net Capital and demonstrate to the ICC Board of Managers, upon recommendation by ICC senior management, that such person seeking to be a Treasury Participant satisfies the stringent credit criteria established by the ICC Board of Managers. See *infra* Section III.B.2 for a discussion of ICE Clear Credit’s membership standards.

⁸⁰ See letter from Stanislav Ivanov, ICC, dated Dec. 3, 2025 (“ICC Response Letter”), at 3.

⁷⁰ See Exhibit C of the Application, at 1.

⁷¹ See Exhibit L of the Application, at 1.

⁷² See Exhibit C of the Application.

⁷³ See *supra* note 11 (summarizing the Commission rules applicable to registered clearing agencies and the Commission’s tools for the supervision and examination of registered clearing agencies).

⁷⁴ Section 17A(b)(3)(B) of the Exchange Act also states that the rules of the clearing agency are subject to the provisions of Section 17A(b)(4) of the Exchange Act.

⁷⁵ 15 U.S.C. 78c(a)(24).

Commission Merchants (“FCMs”) to become Treasury Participants or Non-Participant Parties and adjust its rules to accommodate FCMs’ participation.⁸¹ In response, ICC explained that Treasury Rule 201(c) is non-exclusive, and ICC may accept FCMs as Treasury Participants provided that they meet and maintain the ICC participation standards set out in Treasury Rule 201(b).⁸² With respect to adjusting the Treasury Rules to accommodate FCMs, ICC stated that certain of the inconsistencies between the Treasury Rules and the CFTC Rules are outside the control of ICC.⁸³

FCMs are not one of the types of persons listed in Section 17A(b)(3)(B) of the Exchange Act, nor has the Commission, by rule, designated that FCMs may become participants in a clearing agency. These suggestions therefore pertain to certain choices ICC has made in designing its clearing agency but do not bear on whether ICC’s Application is consistent with a specific Commission rule, or whether ICC’s Application more generally meets the standard for registration. However, the Commission understands that Treasury Rule 201(b) would allow an FCM to join ICC, if it meets the participation standards set out in Rule 201(b), just as a clearing agency would be able to do so.⁸⁴ In addition, the Treasury Rules do not prohibit an FCM (or any other type of entity) from being a Non-Participant Party. Therefore, the commenter’s request for an explicit acknowledgement in the Treasury Rules that FCMs may join is unnecessary.

Another commenter proposed clarifications to the Treasury Rules related to registered investment companies.⁸⁵ The commenter suggested these clarifications would help ICC obtain potential no-action relief and that such no-action relief, if granted, would facilitate the participation of registered

investment companies.⁸⁶ In response, ICC stated that it appreciated the proposed clarifications and will continue to work with market participants, particularly on matters affecting Treasury Participants or Clients that are registered investment companies.⁸⁷

Section 17A(b)(3)(B) of the Exchange Act does not specify how registered investment companies’ participation should be facilitated. The clarifications sought by the commenter pertain to certain choices ICC has made in designing its clearing agency and do not bear on whether ICC’s Application is consistent with a specific Commission rule, or whether ICC’s Application more generally meets the standard for registration.

For these reasons, the Commission finds that the Application satisfies the requirements of Section 17A(b)(3)(B) of the Exchange Act.

2. Statutory Standard and Analysis: Section 17A(b)(4)(B)

Section 17A(b)(4)(B) of the Exchange Act states that a registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. Section 17A(b)(4)(B) also provides that a registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

With respect to the criteria for participation under Section 17A(b)(4)(B) of the Exchange Act, the Application describes how ICC requires that all Treasury Participants meet and maintain standards of business integrity, financial responsibility, creditworthiness, operational capability, experience and competence.⁸⁸ Among other things, Treasury Participants must: maintain a minimum of \$50 million of Adjusted Net Capital;⁸⁹

demonstrate to the ICC Board of Managers, upon recommendation by ICC senior management, that such person seeking to be a Treasury Participant satisfies the stringent credit criteria established by the ICC Board of Managers; demonstrate sufficient financial ability to make its anticipated Treasury Guaranty Fund Contributions and provide Margin as required by the Treasury Rules; demonstrate risk management competence; and participate in default management simulations, technology testing, and other exercises as notified by ICC from time to time.⁹⁰

In making the determination as to whether a person meets the qualifications to become a Treasury Participant and maintains these standards, ICC reserves the right to examine the books and records of any applicant or Treasury Participant.⁹¹ Such an examination may be performed onsite at the applicant or Treasury Participant, during normal business hours, and with reasonable advance notice.⁹² In the case of a Treasury Participant, such an examination would be performed not more frequently than annually, unless ICC determines that a more frequent examination of the Treasury Participant is appropriate for the protection of the clearing system operated by ICC pursuant to the Treasury Clearing Rules.⁹³

Pursuant to Treasury Rule 203, ICC may suspend or revoke any Treasury Participant’s clearing privileges for failure to comply with the Treasury Rules or may impose additional capital, Margin, Trade, and Contract restrictions on a Treasury Participant to protect ICC and the other Treasury Participants. Its rules provide that ICC has the authority to deny participant status to entities that are subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act⁹⁴ or revoke participant status of entities that become subject to such a statutory disqualification.⁹⁵

ICC uses a due diligence process to ensure that all applicants meet the required criteria for participation and conducts on-going monitoring of

Participant that is a Broker-Dealer, its net capital as defined in Rule 15c3-1 and as reported on its FOCUS Report and (ii) for a Treasury Participant that is not a Broker-Dealer, the amount of its net capital as determined pursuant to a similar risk adjusted capital calculation methodology acceptable to ICC.

⁹⁰ See Exhibit O of the Application; Treasury Rule 201(b).

⁹¹ ICC Treasury Clearing Rule 201(a).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ 15 U.S.C. 78c(a)(39).

⁹⁵ See Exhibit O of the Application, at 1; Treasury Rules 201 and 207.

⁸¹ See letter from Allison Lurton, FIA, dated Oct. 6, 2025 (“FIA”), at 3–5. This commenter suggested, among other things, that ICC adjust certain of its rules to accommodate FCMs’ clearing of repurchase transactions involving customer funds pursuant to rules of the Commodity Futures Trading Commission (“CFTC”). For example, the commenter noted that ICC’s requirement to submit for clearing all Trades in furtherance of Rule 17Ad-22(e)(18)(iv) could be inconsistent with an existing CFTC rule that permits an FCM to enter into a repurchase transaction involving customer funds only with certain permitted counterparties, not including SEC-registered clearing agencies.

⁸² See ICC Response Letter at 3.

⁸³ *Id.*

⁸⁴ See *id.*

⁸⁵ See letter from Robert Toomey, SIFMA, William C. Thum, SIFMA Asset Management Group, and Tara R. Buckley, Investment Company Institute, dated Oct. 6, 2025 (“SIFMA & AMG”), at 6–9.

⁸⁶ *Id.* at 6–9 (noting that in the adopting release to Rule 17Ad-22(e)(18)(iv) “the SEC granted no-action relief stating that ‘if a registered investment fund’s cash and/or securities are placed and maintained in the custody of FICC for purposes of meeting FICC’s margin deposit requirements that may be imposed for eligible secondary market transactions in connection with the fund’s participation in the Sponsored Program, it would not provide a basis for enforcement action under Section 17(f) of the 1940 Act so long as [certain criteria are met]’”).

⁸⁷ ICC Response Letter at 7.

⁸⁸ See Exhibit O of the Application.

⁸⁹ For the purposes of Treasury Rule 201(b)(i), Adjusted Net Capital means (i) for a Treasury

participants.⁹⁶ In this regard, ICC requires Treasury Participants to submit statements of financial condition at such times and in such manner as prescribed by ICC and requires each Treasury Participant that is a Broker-Dealer to provide ICC a copy of its FOCUS Reports, as and when filed with the Financial Industry Regulatory Authority.⁹⁷ ICC further requires Treasury Participants to notify ICC immediately in writing of certain events, such as a material adverse change in a Treasury Participant's financial condition or any proposed material reduction in a Treasury Participant's operating capital.⁹⁸ If ICC determines a Treasury Participant is in danger of not meeting the requirements or otherwise poses an unacceptable level of risk to ICC or other participants of the Treasury Business, as applicable, ICC may take action to limit ICC's exposure, including an increase in initial margin requirements, reduction of participant positions, or reduction of the concentration thresholds applicable to the participant.⁹⁹ ICC also may, in the event a Treasury Participant fails to comply with the Treasury Rules or procedures, suspend or revoke the Treasury Participant's clearing privileges and impose additional capital, margin, or other requirements on a Treasury Participant.¹⁰⁰ Finally, where a Treasury Participant commits a material breach of the Treasury Rules or any of the terms or provisions of any agreement between ICC and the Treasury Participant, which is not remedied promptly after notice from ICC, ICC may impose limitations, conditions, and restrictions upon a Treasury Participant or, subject to the requirements of Treasury Rule 615(b), terminate the status of the Treasury Participant.¹⁰¹

Commenters recommended that ICC establish "more specific capital requirements on applicants who wish to become Treasury Participants, depending on their entity type"¹⁰² and adjust the capital requirements "based

on the activity of the Participant."¹⁰³ ICC stated in its response that the membership requirements are the same for all applicants and include fitness criteria, financial standards, and operational standards, which ICC states are appropriate and specific enough for potential applicants.¹⁰⁴

While Section 17A(b)(4)(B) of the Exchange Act provides that ICC may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility as ICC may establish, it does not set out any minimum capital requirement that a participant must satisfy, nor does it specify certain requirements regarding financial responsibility for each type of Treasury Participant or require these standards be adjusted based on a Treasury Participant's activities.

Section 17A(b)(4)(B) of the Exchange Act therefore does not require a registered clearing agency to establish capital standards specific to each type of participant or to adjust capital standards in response to the level of a participant's activity. ICC's Treasury Rules give ICC the ability to establish more specific standards, however, if ICC determines they are needed.¹⁰⁵ As stated above, for the protection of ICC and other Treasury Participants, ICC can impose additional capital, margin, or other requirements on a Treasury Participant.¹⁰⁶ Moreover, ICC conducts on-going monitoring of Treasury Participants, including obtaining statements of financial position. Therefore, pursuant to its Treasury Rules ICC could, if needed for the protection of ICC and Treasury Participants, adjust capital requirements,¹⁰⁷ as recommended by commenters.

¹⁰³ SIFMA & AMG at 11–12.

¹⁰⁴ ICC Response Letter at 3.

¹⁰⁵ Treasury Rule 203(b) ("In addition to any other rights granted to ICE Clear Credit under these Rules, for the protection of ICE Clear Credit and the Treasury Participants, ICE Clear Credit shall be authorized: (i) to impose such additional capital, Margin or other requirements on a Treasury Participant; (ii) to allow such Treasury Participant to submit Trades for liquidation only; (iii) to limit or restrict the type of Contracts that may be cleared by such Treasury Participant in any of its accounts with ICE Clear Credit; or (iv) to limit or restrict the aggregate notional or other reference amount of positions in Contracts that are permitted to be maintained by such Treasury Participant in any of its accounts with ICE Clear Credit in the Treasury Clearing Service").

¹⁰⁶ Treasury Rule 203. Per Treasury Rule 203(a), ICC may only suspend or revoke a Treasury Participant's clearing privileges subject to the requirements of Treasury Rule 615(b). That rule imposes certain procedural requirements, including consultation with ICC's regulators and consent of the Board.

¹⁰⁷ As noted above, ICC was deemed registered with the Commission as a clearing agency in 2011 solely for the purpose of clearing security-based

Because the Treasury Rules would establish robust financial standards and operational competency standards for Treasury Participants that clearly denote ongoing compliance obligations and set forth consequences for failing to meet those obligations, the Treasury Rules are sufficient to protect the clearing agency from the risks that can be associated with Treasury Participants who would not otherwise meet such competency standards.

For the reasons discussed above, the Commission determines that the rules of ICC regarding participation in the clearing agency are consistent with the standards set forth in Section 17A(b)(4)(B) of the Exchange Act.

C. Fair Representation

1. Statutory Standard: Section 17A(b)(3)(C)

Section 17A(b)(3)(C) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.¹⁰⁸

2. Summary of Application and Analysis

Under Section 17A(b)(3)(C) of the Exchange Act, the Commission considers whether the Application provides fair representation both to shareholders and to participants in the selection of directors and the administration of affairs. In doing so, the Commission undertakes an analysis of the documents in the Application that govern or otherwise affect the selection of directors by the clearing

swaps. Since that time, ICC has been operating its CDS Business and acting as a CCP for CDS. As a CCP for CDS, ICC is subject to Rule 17Ad-22(b)(7). That rule requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal to or greater than \$50 million with the ability to obtain membership. Rule 17Ad-22(b)(7) allows ICC to provide for a higher net capital requirement as a condition for membership if ICC demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application. Thus, if ICC were to establish more specific capital requirements on applicants who wish to become Treasury Participants, as suggested by commenters, ICC would need to do so in compliance with Rule 17Ad-22(b)(7).

¹⁰⁸ Section 17A(b)(3)(C) of the Exchange Act also states that the Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.

⁹⁶ See Exhibit O of the Application, at 1; Treasury Rule 201(a).

⁹⁷ Treasury Rule 204. The rule further provides that any Treasury Participant that is not a Broker-Dealer shall provide to ICC a copy of such forms as ICC may determine to be necessary on a comparable schedule to that which a Broker-Dealer would be required to follow in filing such forms with the Financial Industry Regulatory Authority.

⁹⁸ Treasury Rule 206.

⁹⁹ See Exhibit O of the Application; Treasury Rules 203, 207, and 209.

¹⁰⁰ Treasury Rule 203.

¹⁰¹ Treasury Rule 207.

¹⁰² FIA at 5; see also SIFMA & AMG at 11–12; letter from Katherine Darras, International Swaps and Derivatives Association, dated Oct. 6, 2025 ("ISDA"), at 2.

agency and the administration of its affairs. Such documents include, for example, the constitution, articles of incorporation, bylaws, rules, and written policies or procedures. Such analysis considers both qualitative and quantitative factors, including the number of board positions reserved for management or to represent participants, as well as the existence of provisions in governing documents that may impede participation in the selection of directors or the administration of affairs. The Commission also considers the overall organization of the clearing agency, the nature of the products it clears, and the structure of the market it serves, including the nature of existing clearing and settlement arrangements in the market served, the existence of other clearing agencies that would compete to offer services, and the size of the market served by the applicant, to evaluate whether the representation proposed by the applicant is consistent with the requirements of the Exchange Act.¹⁰⁹ Finally, because ICC will operate the Treasury Business in the same existing legal entity where it operates the CDS Business, the Commission considers ICC's existing arrangements that affect its CDS Business, to the extent they indicate whether ICC, as an entity, would provide fair representation to shareholders and participants of its Treasury Business.

After performing this analysis, the Commission finds that the Application provides fair representation for the reasons set forth below.

With respect to the fair representation of the shareholders in the selection of its directors and administration of its affairs, ICC's Parent may elect up to five members of ICC's Board of Managers, which consists of nine members total.¹¹⁰ Subject to the consultation rights of the CDS Risk Committee and Treasury Risk Committee, the management of the affairs of ICC is vested exclusively in the Board of Managers. Taken as a whole, these provisions assure a fair representation of the shareholders of ICC in the selection of its directors and administration of its affairs.

¹⁰⁹ Accordingly, the level of participant representation needed to ensure fair representation consistent with the Exchange Act may vary depending on the facts and circumstances, including the market or markets to which the application is directed.

¹¹⁰ See Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Governance Playbook and Seventh Amended and Restated Operating Agreement, Release No. 34-101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (File No. SR-ICC-2024-010).

With respect to fair representation of the participants of ICC in the selection of its directors and administration of its affairs, ICC's Parent is the sole shareholder of ICC, and the Application includes no provision to make ICC voting stock available for purchase to Treasury Participants. As such, ICC operates in a manner that is different from some other registered clearing agencies, which are constituted of owner-members.¹¹¹ Four positions on the Board, however, are reserved for persons designated by the respective non-Board level Risk Committees.¹¹²

Specifically, pursuant to Treasury Rule 508(a), effective as of the Treasury Governance Commencement Date, the Treasury Risk Committee shall have authority to designate to ICC's Parent two members for election to the Board (with one independent).¹¹³ Moreover, pursuant to Treasury Rule 502, ICC shall not take, or permit to be taken, certain actions without consulting the Treasury Risk Committee. Such actions include, among other things, modifying the Treasury Rules with respect to clearing new or existing Contracts, modifying provisions related to margin, and modifying provisions related to the Treasury Guaranty Fund. ICC's Treasury Risk Committee will include representatives of Treasury Participants and non-participants.¹¹⁴ This right will apply immediately from adoption of the Treasury Rules and will not depend on the application of the Treasury

¹¹¹ Securities Acts Amendments of 1975, Report of the Senate Comm. on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. 94-75, 94th Cong., 1st Sess. 123-24 (1975) ("[T]he bill establishes no norm as to whether clearing agencies should or should not be operated for profit. The bill makes no attempt to set up particular standards of representation or participation. Rather, it provides that the Commission must assure itself that the rules of the clearing agency regarding the manner in which decision are made give fair voice to participants as well as to shareholder . . .").

¹¹² See Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Governance Playbook and Seventh Amended and Restated Operating Agreement, Release No. 34-101820 (Dec. 5, 2024), 89 FR 99917 (Dec. 11, 2024) (File No. SR-ICC-2024-010). Pursuant to Treasury Rule 508(a), effective as of the Treasury Governance Commencement Date, the Treasury Risk Committee will have authority to designate to ICC's Parent two of these persons for election to the Board.

¹¹³ As stated above, the Treasury Governance Commencement Date means the date of the first annual Board election occurring after the Treasury Business accounts for a specified percentage of ICC's revenue and ICC has obtained a specified percentage of the overall market share for Treasury clearing. See *supra* note 633.

¹¹⁴ Per Treasury Rule 503, the Treasury Risk Committee will have fourteen members total, with nine being representatives of Treasury Participants, two being representatives of non-participants, two being officers of ICC, and one being an independent member of the Board of Managers.

Governance Commencement Date. Finally, ICC currently has the same arrangement for its CDS Business, and the CDS Risk Committee currently can designate four members for election to the Board (with two independent).¹¹⁵

Taken as a whole, the above-described provisions of the Application provide Treasury Participants with the right to nominate certain members of ICC's Board of Managers after the Treasury Governance Commencement Date, as well as the immediate right to consult on certain matters affecting ICC. Although the Treasury Risk Committee will not be able to designate two members for election to the Board until after the Treasury Governance Commencement Date, prior to that time participants in the CDS Business will, as now, be able to designate four members for election to the Board. Thus, while the Treasury Risk Committee will not be able to designate to ICC's Parent two members for election to the Board (with one independent) until the Treasury Governance Commencement Date, ICC's current participants can designate four members for election to the Board (with two independent) through the CDS Risk Committee. Taken together, these provisions provide for fair representation to all of ICC's participants, meaning Treasury Participants and participants in the CDS Business, regarding the selection of ICC's Board of Managers and the administration of ICC's affairs at ICC as a whole, consistent with Section 17A(b)(3)(C) of the Exchange Act.

For the reasons discussed directly above, the Commission determines that the rules of ICC assure fair representation in the selection of its directors and administration of its affairs consistent with Section 17A(b)(3)(C) of the Exchange Act.

D. Fees

1. Statutory Standard: Section 17A(b)(3)(D) and (E)

Section 17A(b)(3)(D) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.¹¹⁶ Section 17A(b)(3)(E) of the Exchange

¹¹⁵ See ICC CDS Rules, Chapter 5. After the Treasury Governance Commencement Date, the CDS Risk Committee and Treasury Risk Committee each will designate two managers for election to the Board, including an independent manager. The overall number of managers designated by ICC participants and non-participants will remain at four (of nine), with the selection split between the two non-Board risk committees.

¹¹⁶ 15 U.S.C. 78q-1(b)(3)(D).

Act states that a clearing agency shall not be registered unless the rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.¹¹⁷

2. Summary of Application and Analysis

ICC's Application does not include a fee schedule or schedule of prices; however, the Application describes ICC's (i) authority to determine and equitably allocate fees; (ii) rules regarding fees; and (iii) the status of its proposed fee schedule.¹¹⁸ The Application also references the current fees for the CDS Business and explains where details about the fees for the CDS Business can be found on ICC's website.¹¹⁹ The Application also states that ICC is developing its fee schedule and will engage the marketplace on its ultimate fee structure and that the fee schedule will be published on ICC's website when the Treasury Business is launched after filing a proposed rule change with the Commission pursuant to section 19(b)(3)(A) of the Exchange Act.¹²⁰

Treasury Rule 606 requires that clearing fees and other charges for ICC services be as fixed from time to time by ICC with the approval of the Board of Managers.

In its letter, ICC explained the factors that ICC will consider in setting fees for the Treasury Business. While ICC may consider various factors, it identified four as examples: (i) market projections, including anticipated volume, revenue and market participation in the Treasury Business, (ii) costs and expenses in offering the Treasury Business, taking into account the investments that ICC has made and the level of investment and development needed for the clearing service, (iii) external service provider charges incurred by ICC, and (iv) market participant feedback.¹²¹ ICC further stated it will consider the impact on competition in setting the clearing fees and will ensure that such fees do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.¹²² In Exhibit E of the Application, ICC further stated that its fee schedule for the Treasury Business will be submitted to the Commission as a proposed rule change pursuant to

Section 19(b)(3)(A) of the Exchange Act.¹²³

(a) Analysis

While ICC does not yet have a fee schedule for the Treasury Business, the Application identifies ICC's existing fee schedule for the CDS Business and the rules governing any fees that it will assess on its participants, as described above. These rules require that fees and other charges be fixed by ICC with approval of the Board of Managers. In its letter, ICC further identified the factors it will consider in setting fees.¹²⁴ As noted above, these factors would include, among other things, market projections and costs and expenses in offering the Treasury Business. In the Application, ICC stated it will engage the marketplace as it develops its ultimate fee structure.¹²⁵ The Commission believes that considering these factors, and engaging the marketplace as it develops its ultimate fee structure, both should help ensure that ICC's fee schedule for the Treasury Business is consistent with Section 17A(b)(3)(D) of the Exchange Act.

Separately, any fees, dues or other charges that ICC intends to assess must be filed as a proposed rule change pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.¹²⁶ Clearing agency fees are subject to the requirements of the Exchange Act, including Section 17A(b)(3)(D), and thus, the Commission would consider if any future fee schedule for the Treasury Business is consistent with 17A(b)(3)(D) when it is filed as a proposed rule change.¹²⁷

Finally, under Section 17A(b)(3)(E) of the Exchange Act, ICC may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants. Although ICC does not yet have a fee schedule for the Treasury Business, a review of ICC's current fee schedule for its CDS Business shows that ICC does not impose any schedule of prices, or fix rates or other fees, for services rendered by its CDS

Participants.¹²⁸ Moreover, because any fees, dues or other charges that ICC intends to assess must be filed as a proposed rule change pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder, the Commission will be able to consider if any future fee schedule for the Treasury Business imposes any schedule of prices, or fix rates or other fees, for services rendered by Treasury Participants.

Accordingly, the Commission determines that the Application is consistent with Section 17A(b)(3)(D) of the Exchange Act and Section 17A(b)(3)(E) of the Exchange Act.¹²⁹

E. Rules Designed To Promote Prompt and Accurate Clearance and Settlement and the Safeguarding of Securities and Funds

1. Statutory Standard: Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest. It also states that a clearing agency shall not be registered unless the Commission determines that the rules are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of this section or the administration of the clearing agency.¹³⁰

¹²³ See Exhibit E of the Application.

¹²⁴ ICC Response Letter at 8.

¹²⁵ See Exhibit E of the Application.

¹²⁶ See 15 U.S.C. 78s(b); 17 CFR 240.19b-4; see also Exhibit E of the Application (acknowledging its obligations under Section 19(b) and Rule 19b-4).

¹²⁷ 15 U.S.C. 78q-1(b)(3)(D); see also 15 U.S.C. 78s(b) (requiring proposed rule changes to be filed by the Commission, which shall publish notice thereof and give interested persons an opportunity to respond). Some proposed rule changes regarding dues, fees, or charges take effect upon filing. See 15 U.S.C. 78s(b)(3)(A)(ii); see also 15 U.S.C. 78s(b)(3)(C) (specifying when the Commission may temporarily suspend the immediate effectiveness of such filings).

¹²⁸ See Exhibit E of the Application. Details of the CDS Business's current fees can be found at: https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees.pdf and https://www.ice.com/publicdocs/clear_credit/ICE_Clear_Credit_Fees_Clearing_Participant.pdf.

¹²⁹ 15 U.S.C. 78q-1(b)(3)(E).

¹³⁰ With respect to the provisions in Section 17A(b)(3)(F) of the Exchange Act requiring that the rules of the clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency and not regulate by virtue of any

¹¹⁷ 15 U.S.C. 78q-1(b)(3)(E).

¹¹⁸ See Exhibit E of the Application.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ ICC Response Letter at 8.

¹²² *Id.*

2. Summary of Application and Analysis

The Commission has adopted multiple rules that are related to Section 17A(b)(3)(F), in that they establish requirements related to financial risk management, default management and loss allocation, and recovery and orderly wind-down. Specifically, these Commission rules implicate the safeguarding of securities and funds and promoting the prompt and accurate clearance and settlement of securities transactions, including the collection of margin, composition of the guaranty fund, default management and loss allocation procedures, and other risks.¹³¹ To analyze ICC's Application under Section 17A(b)(3)(F), the Commission has considered ICC's Treasury Rules concerning its account structures, margin system, guaranty fund, default management, and loss allocation processes, as set forth in further detail below.

As a threshold matter, the Application establishes a comprehensive risk management framework consistent with Commission rules that help ensure ICC will collect sufficient margin to cover its exposures, maintain an appropriately sized Guaranty Fund, and be able to manage a default and allocate losses appropriately, if or when needed. ICC's risk management framework is designed to address the particular features of ICC's proposed participation structure, *i.e.*, to manage the risks presented by Treasury Participants and Clients clearing via a Treasury Participant who have different obligations and access to ICC. For these reasons and the reasons discussed below, the Commission determines that ICC's rules are consistent with the requirements for the prompt and accurate clearance and settlement of securities and the safeguarding of funds and securities as set forth in Section 17A(b)(3)(F) of the Exchange Act and do not regulate by virtue of any authority conferred by the Exchange Act matters not related to the

authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the clearing agency, those topics have been addressed in Parts III.B and III.G, concerning the statutory requirements for, respectively, participant standards of the clearing agency and addressing the clearing agency's burden on competition. With respect to the provisions requiring that the rules foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, those topics have been addressed in Part III.G, concerning the statutory requirements addressing the clearing agency's burden on competition.

¹³¹ See 17 CFR 240.17ad-22(e)(4), (e)(6), (e)(13), (e)(23)(ii); 240.17ad-26.

purposes of Section 17A of the Exchange Act or the administration of the clearing agency.

(a) Account Structure and Safeguarding of Securities and Funds

ICC offers separate margin accounts for the positions of Treasury Participants and their Clients. A House Margin Account holds Margin for House Positions.¹³² Margin for Client positions may be held in a Client-Funded Gross IM Account, Clearing Participant-Funded Gross IM Account, Hybrid Gross IM Account, or Net Client IM Account.¹³³ ICC states that these accounts serve two important functions.¹³⁴ They keep House Margin separate from Client-Funded Margin and they also keep Client-Funded Margin separate from House Margin.¹³⁵ Specifically, Client-Funded Margin is housed in Client-Funded Gross IM Accounts or the relevant subaccount associated with Hybrid Gross IM Accounts.¹³⁶ Alternatively, House-Funded Client Margin is held in Clearing Participant-Funded Gross IM Accounts, Net Client IM Accounts, or the relevant subaccount associated with a Hybrid Gross IM Account.¹³⁷ Once posted, ICC either invests Initial Margin in a bank deposit at a commercial bank or pursuant to reverse repurchase agreements backed by certain U.S. Treasury securities.¹³⁸

In Exhibit L, ICC describes how it safeguards its own assets and the assets of Treasury Participants and Clients.¹³⁹ ICC does so by using only approved settlement banks, custodians, and other financial service providers that ICC has chosen based on their ability to provide the services required by ICC, creditworthiness, relevant experience and operational stability. ICC conducts due diligence reviews to assess whether its settlement banks and custodians employ adequate accounting practices; safekeeping procedures and internal controls that protect deposits; ensure full segregation and protection of financial instruments and allow ICC prompt access to assets when required. In addition, ICC monitors the financial health of the financial institutions in which it holds its settlement and

custodial accounts on an ongoing basis, with an emphasis on measures related to liquidity and cash management.¹⁴⁰

As further described in Exhibit J, ICC will use its established direct settlement model to manage the settlement of Variation Payments, Initial Margin, and Treasury Guaranty Fund contributions. Treasury Participants will provide ICC with direct debit authority against their Treasury Business accounts, which are designated accounts that can accommodate SWIFT messages. ICC will move cash between its commercial bank accounts for settlement of payments. ICC also will maintain a second set of accounts as a backup facility if ICC is unable to access its primary bank account. Treasury Participants will be responsible for ensuring that ICC has timely received any requested payments; if not, ICC may declare them in default.¹⁴¹

Commenters made suggestions regarding risk management procedures related to the relationship between a Treasury Participant and a Client, including with respect to porting of Client accounts,¹⁴² a Client default,¹⁴³ and the holding of Client collateral.¹⁴⁴ Commenters also made suggestions regarding how the Treasury Rules affect the legal relationship between a Treasury Participant and a Client.¹⁴⁵

¹⁴⁰ Exhibit L of the Application, at 1.

¹⁴¹ Exhibit J of the Application, at 4.

¹⁴² FIA at 10-11 and ISDA at 7-8 (require all parties to consent prior to porting a Client, including the transferring Treasury Participant and the receiving Treasury Participant; only port if the transfer of positions does not result in margin deficiency for receiving Treasury Participant; allow a Client to designate a backup Treasury Participant to receive positions); SIFMA & AMG at 10 (make porting subject to agreement of all parties and prior notice to Client).

¹⁴³ See FIA at 7-9 and ISDA at 3-6 (among other things, allow a Treasury Participant to trigger a Client default and manage the default; allow a Treasury Participant to port a Client's transactions to another Treasury Participant; convert a House position into a Client position or transfer a Client's transactions to the Treasury Participant's House account upon a Client default; permit a Client's transactions to settle in the ordinary course after default; narrow the indemnity that a Treasury Participant provides to ICC in the event ICC manages a Client default; and allow a receiving party to conduct a buy-in at its discretion where a delivery party has failed to deliver securities). See also SIFMA & AMG at 10 (clarify the obligations of Treasury Participants in determining losses arising from Client positions; provide a means for Clients to dispute determinations made by Treasury Participants; and allow Client transactions to settle in the ordinary course after a Treasury Participant's default).

¹⁴⁴ SIFMA & AMG at 3 and 5-6 (clarify where and how it will hold Pledged Items and clarify there will not be cross-contamination between Gross IM and Net IM Accounts in the event of application of funds in the Treasury Guaranty Fund).

¹⁴⁵ See SIFMA & AMG at 12 (clarify that certain of the Treasury Rules do not dictate the terms of the relationship between a Treasury Participant and

¹³² Exhibit J of the Application, at 5; Treasury Rule 102.

¹³³ Exhibit J of the Application, at 5.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* Hybrid Gross IM Accounts have separate subaccounts dedicated to contributions from Treasury Participants and Non-Participant Parties. Treasury Rules, at Rule 102.

¹³⁷ Exhibit J of the Application, at 5.

¹³⁸ Exhibit L of the Application, at 2.

¹³⁹ *Id.*

In its response letter, ICC stated that it may consider amending the Treasury Rules, such as Treasury Rule 316(g), to address some of the comments, such as permitting a Treasury Participant to manage a Client default unless it elects to have ICC manage the Client default.¹⁴⁶ ICC further explained, however, that the Treasury Rules currently permit a Treasury Participant, upon request to ICC, to manage the default of its Client.¹⁴⁷ With respect to the relationship among ICC, Treasury Participants, and their Clients, ICC explained that it intentionally omitted any privity of contract between ICC and Clients, because ICC has no legal agreements with Clients.¹⁴⁸ Moreover, ICC stated that the Treasury Rules should not, and do not, dictate the terms of the relationship between Treasury Participants and Clients.¹⁴⁹

ICC further stated that the commenters' suggestions generally consist of clarifications or recommendations to refine or add optionality. While ICC committed to working with commenters on their suggestions and clarifications, ICC also stated that the comments did not necessarily affect whether the Application is consistent with the Exchange Act or the rules thereunder.¹⁵⁰ The Commission agrees that the commenters' suggestions pertain to certain choices ICC has made in designing its clearing agency but do not bear on whether ICC's Application is consistent with a specific Commission rule, or whether ICC's Application more generally meets the standard for registration.

(b) Margin System

As described in Exhibit J, a Treasury Participant must post margin for its own positions and on behalf of its Clients. Specifically, each Treasury Participant is responsible for ensuring that Margin is met for its Client-Related Positions and transferring to ICC cash or other collateral needed to meet such Margin requirement. Clients may choose between net or gross margin position accounts, as described further in Exhibit

a Client); FIA at 13 (allow a Treasury Participant to obtain a Client's agreement to be bound by all of the Treasury Rules generally, rather than identifying each particular Treasury Rule in the agreement between the Treasury Participant and Client and make available an account analysis and legal opinion demonstrating that a Treasury Participant acts as an agent when clearing transactions for a Client).

¹⁴⁶ ICC Response Letter at 5.

¹⁴⁷ *Id.*

¹⁴⁸ ICC Response Letter at 7.

¹⁴⁹ *Id.*

¹⁵⁰ ICC Response Letter at 5.

J.¹⁵¹ These accounts allow a Client to choose whether to fund all, some, or none of its Margin requirement. ICC will maintain Client-funded Client Margin in separate, legally segregated, margin accounts from House-funded Client Margin or House Margin. Finally, ICC will determine Margin for each Treasury Participant in respect of its House Positions and in respect of any applicable Client-Related Positions, following the close of business on each ICE Business Day, based on 99% Value-at-Risk equivalent risk measures with additional liquidity and concentration requirements.¹⁵²

ICC's margin system also includes a Variation Payment. The Variation Payment results from changes in the market value of a Treasury Participant's own positions and the positions of the Treasury Participant's Clients.¹⁵³

Commenters made suggestions regarding ICC's margin system, including requiring Treasury Participants to return to Clients any Client-funded collateral that is in excess of the margin requirements for the Client positions;¹⁵⁴ re-characterizing ICC's security interest in collateral;¹⁵⁵ implementing a collateral-in-lieu model;¹⁵⁶ clarifying certain points regarding variation margin¹⁵⁷ and intraday margin;¹⁵⁸ and establishing cross-margining relationships.¹⁵⁹ ICC

¹⁵¹ Exhibit J of the Application, at 3. As noted, Client-Related Positions may be held in: (i) Client-Funded Gross IM Accounts, (ii) Clearing Participant-Funded Gross IM Accounts, (iii) Hybrid Gross IM Accounts or (iv) Net Client IM Accounts.

¹⁵² The estimated Value-at-Risk measures are based on forward-looking simulated scenarios corresponding to at least a 2-day margin period of risk. ICC also uses Monte-Carlo simulations to estimate Initial Margin requirements and considers anti-procyclicality in determining margin amounts. Exhibit J of the Application, at 3–4.

¹⁵³ Exhibit J of the Application, at 4.

¹⁵⁴ SIFMA & AMG at 5.

¹⁵⁵ SIFMA & AMG at 4 (define ICC's security interest in collateral as a "springing" security interest, meaning that the security interest only applies if a repurchase agreement is characterized as a loan).

¹⁵⁶ SIFMA & AMG at 3.

¹⁵⁷ FIA at 11–12; ISDA at 8 (clarify the language regarding the settlement of variation margin in Treasury Rule 401(j) so outstanding exposures are not reset to zero); SIFMA & AMG at 4 (base the variation margin payment on changes in the value of collateral rather than the market price of the trade); and SIFMA & AMG at 13 (provide legal opinion that cash transferred as variation margin payments will be treated as settlement payments rather than posted margin).

¹⁵⁸ SIFMA & AMG at 5 (clarify when Clients are required to satisfy intraday margin calls, as Treasury Rule 401(a)(ii) specifies that intraday margin needs to be delivered by Treasury Participants within one hour of notice but does not make clear if margin calls affecting Clients will similarly need to be satisfied within one hour.).

¹⁵⁹ SIFMA & AMG at 5; letter from Jiri Krol, Alternative Investment Management Association, dated Oct. 6, 2025 ("AIMA"), at 2.

responded that it will consider the request for clarifications and continue to engage with market participants on these suggestions.¹⁶⁰ ICC also stated that it will file any changes to the Treasury Rules as proposed rule changes under Section 19(b) under the Exchange Act, as appropriate. Overall, the commenters' suggestions pertain to certain choices ICC has made in designing its clearing agency, but do not bear on whether ICC's Application is consistent with a specific Commission rule, or whether ICC's Application more generally meets the standard for registration.

Commenters also requested that ICC allow Treasury Participants to post Treasury securities as collateral.¹⁶¹ In response, ICC explained that Treasury Participants may use Treasuries, not just cash, to satisfy a portion of their requirements.¹⁶² ICC further stated that the use of Treasuries to satisfy a portion of margin and guaranty fund requirements is explicitly permitted by Schedule 401 to the Treasury Rules.¹⁶³ Thus, the Treasury Rules already address the commenters' request.

(c) Guaranty Fund

As described in Exhibit J, ICC will establish and maintain a Treasury Guaranty Fund. Treasury Participants will be required to contribute to the Treasury Guaranty Fund, per Treasury Rule 801.¹⁶⁴ ICC will base a Treasury Participant's contribution on its House Positions and its Client-Related Positions.¹⁶⁵ Treasury Participants will be required to contribute to the Treasury Guaranty Fund on behalf of their Clients.¹⁶⁶

As described in Exhibit J, the required contribution to the Treasury Guaranty Fund by a Treasury Participant is risk-based and uses a set of stress scenarios that includes adverse changes to the underlying U.S. Treasury security-related term structures in response to changes in the U.S. interest rate levels across different tenors and maturities enhanced with changes of associated term structure shapes.¹⁶⁷ More specifically, as set out in Treasury Rule 801, each Treasury Participant's required contribution to the Treasury Guaranty Fund will be based on the greater of (i) such Treasury Participant's proportionate share of the aggregate

¹⁶⁰ ICC Response Letter at 6–7.

¹⁶¹ FIA at 12; ISDA at 8.

¹⁶² ICC Response Letter at 6.

¹⁶³ Schedule 401 is included at the end of the Treasury Rules, which are Annex E–2 to the Application.

¹⁶⁴ Exhibit J of the Application, at 6.

¹⁶⁵ Treasury Rule 801.

¹⁶⁶ *Id.*

¹⁶⁷ Exhibit J of the Application, at 6.

Treasury Participant Loss Exposure, which is calculated as the two largest Participant Loss Exposures, and (ii) \$20 million. Participant Loss Exposure for any Treasury Participant is the amount determined by ICC using its stress test methodology, calculated on a net exposure basis separately within the House Positions and Client-Related Positions of that Treasury Participant. The amount is equal to the expected losses to ICC associated with the default of that Treasury Participant considering both (i) the uncollateralized loss (meaning the loss after application of Initial Margin and after considering any Variation Payment transferred in respect of such positions given default), and (ii) the uncollateralized loss from contracting or widening credit spreads.

Regarding the Treasury Guaranty Fund sizing, Rule 17Ad-22(e)(4)(iii) requires covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, maintain additional financial resources at a minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions. As described in Exhibit J, ICC will size the Treasury Guaranty Fund to provide financial resources based on Cover-2 regulatory standards.¹⁶⁸ As further described in Treasury Rule 801, this means ICC will set the size of the Treasury Guaranty Fund to, at a minimum, maintain pre-funded financial resources sufficient to enable ICC to meet its financial obligations to Treasury Participants notwithstanding a default by the two Treasury Participants (including any of their affiliated Treasury Participants) creating the largest combined loss to ICC in extreme but plausible market conditions. ICC's approach is consistent with Commission rules because ICC's Treasury Guaranty Fund sizing methodology may produce a Treasury Guaranty Fund size larger than the one computed to the default of the participant family that would potentially cause the largest aggregate credit exposure. Therefore, the Treasury Guaranty Fund sizing methodology is reasonably designed to be consistent with Rule 17Ad-22(e)(4)(iii).

(d) Default Management and Loss Allocation

In Exhibit J, ICC states that it operates using a contemporary clearinghouse risk

waterfall, including a robust risk management framework.¹⁶⁹

Pursuant to the Treasury Rules, upon ICC's determination that a Treasury Participant is in Default,¹⁷⁰ ICC must provide notice of the Default, including the identity of the defaulting participant, as soon as reasonably practicable to the other Treasury Participants and the public.¹⁷¹ Treasury Rule 20-605(d) provides that ICC may hedge open positions of the defaulter.¹⁷² ICC also may initiate the Closing-out Process with respect to the defaulting Treasury Participant.¹⁷³ The Closing-out Process includes the immediate termination of all of such defaulting Treasury Participant's Open Positions and then the satisfaction of any Reimbursement Obligations by the defaulting Treasury Participant, for which ICC can apply the Margin and other assets provided by the defaulting Treasury Participant based on the waterfall set forth in Treasury Rule 20-605(c).

With respect to the default of a Treasury Participant that is also a participant in ICC's CDS Business, ICC stated that should a participant default in one business line, ICC will not automatically declare the participant in default in the other business line. Default in one business line, however, could lead to ICC determining that the participant is likely to fail to meet its obligations to the other business line, which could in turn be a basis for declaring the participant to be in default in the other business line. Where a common participant is declared in default in both the CDS Business and Treasury Business, ICC will conduct independent liquidations and default auctions and maintain separate default resources.¹⁷⁴

With respect to the default of a Client, ICC will resolve the default, unless the associated Treasury Participant requests

to manage the default directly instead. Based on the election of a Treasury Participant, if ICC resolves a Client's Default, ICC will only use the Client-Funded Initial Margin for Client-Related Positions to cover any losses. If the losses exceed the Client-Funded Initial Margin, then ICC may cover any remaining losses with the Client-related margin that was funded by the Treasury Participant, if any. The Treasury Participant is liable for any remaining losses associated with the Client, so ICC also can apply the Treasury Participant's contributions to the Treasury Guaranty Fund in accordance with Treasury Rule 802 or make special Margin calls to the Treasury Participant. However, ICC will not apply any Initial Margin with respect to any House Positions of the Treasury Participant with respect to such excess Client losses.

A Treasury Participant may request to directly manage the Client's default. In that case, the Treasury Participant is responsible for managing the closing of Client-Related Positions between the Treasury Participant and defaulting Client. The Treasury Participant remains responsible to ICC for the performance of any such Client-Related Positions, and ICC will not be responsible for any losses, costs, or expenses.

ICC also employs liquidity risk management mechanisms that are designed to allow ICC to satisfy its liquidity obligations. As further described in Treasury Rule 812(a), if a Settlement Payment Failure or a Delivery Failure occurs, and ICC determines that it would otherwise have or may have insufficient cash liquidity to complete physical settlement, ICC may designate a Settlement Liquidity Event. In the case of a Settlement Liquidity Event, Treasury Rule 812(b) sets out a waterfall of resources that ICC may apply or use to obtain cash liquidity, as described below. ICC must fully use resources at one level of the waterfall before using resources from a subsequent level.

1. The portion of Initial Margin provided by the Failing Party in respect of its House Account or its portion of the Treasury Guaranty Fund contribution that is in cash;

2. Cash portions of the ICC initial Contribution;

3. The ICC Continuing Contribution;

4. The Treasury Guaranty Fund contributions of Treasury Participants other than Failing Parties on a pro rata basis;

5. The Initial Margin provided by Treasury Participants other than Failing Parties in respect of their House

¹⁶⁹ Exhibit J of the Application, at 3.

¹⁷⁰ ICC may determine that a Treasury Participant is in Default if the Treasury Participant or guarantor, among other things, (i) fails to meet any membership obligations, (ii) is in breach of the terms of membership or is suspended, or (iii) is terminated, suspended or has certain clearing privileges revoked pursuant to Treasury Rule 615(b). See Exhibit J of the Application, at 6.

¹⁷¹ Treasury Rule 20-605(b).

¹⁷² *Id.*

¹⁷³ Treasury Rule 20-605(a). As defined in Treasury Rule 102, "Closing-out Process" means, in connection with the Default of a Treasury Participant, the process of termination of Open Positions, determination of amounts owing with respect thereto, netting of such amounts, liquidation and application of any Margin and/or Collateral, and application of Post-Default Portability Rules pursuant to Treasury Rule 20A-02, if applicable.

¹⁷⁴ ICC Response Letter at 8-9.

¹⁶⁸ *Id.*

Accounts that is in cash on a pro rata basis;

6. Credit facilities or committed repurchase agreement facilities secured by non-cash Initial Margin and Treasury Guaranty Fund contributions provided by Failing Parties;

7. Cash obtained by ICC requiring Treasury Participants other than Failing Parties to substitute cash for the non-cash portions of their existing House Initial Margin and guaranty fund contributions;

8. An additional liquidity contribution from ICC's own resources;¹⁷⁵ and

9. Lines of credit, loan agreements, repurchase agreements or similar facilities on a secured or unsecured basis.¹⁷⁶

Commenters requested that ICC obtain legal opinions relating to the default management aspects of ICC's margin framework (*i.e.*, confirming the bankruptcy remoteness of margin held by ICC and enforceability of ICC's rules in the event of insolvency).¹⁷⁷ ICC responded that it will continue to consider these and provide documentation or submit changes under Section 19(b) of the Exchange Act, as appropriate.¹⁷⁸ ICC stated that the Application nevertheless demonstrated that the Treasury Business is built on a well-founded, clear, transparent, and enforceable legal basis, consistent with Rule 17Ad-22(e)(1) under the Exchange Act.¹⁷⁹

Regarding legal opinions, the Commission has previously stated that "[b]ecause the appropriate use of legal opinions will vary on a case-by-case basis, the Commission does not believe it is appropriate to modify Rule 17Ad-22(e)(1) to include a specific requirement for legal opinions addressing particular matters."¹⁸⁰ Accordingly, ICC's approach is consistent with Commission rules.

Commenters also requested that ICC eliminate Treasury Rule 808, which allows ICC to haircut variation margin gains in certain situations involving the

default of a Treasury Participant (also known as reduced gains distribution).¹⁸¹ These commenters stated that the variation margin gains haircutting/reduced gains distribution ("VMGH"), while commonplace in derivatives clearing, is not appropriate for repo clearing.¹⁸² Also, these commenters noted that because repos are used as liquidity and funding instruments, use of VMGH could have serious liquidity implications and exacerbate the stressed market conditions likely to exist in a Treasury Participant default scenario.¹⁸³ ICC explained that while VMGH may not be appropriate in all circumstances of Treasury clearing, it is a tool that ICC may use in limited circumstances.¹⁸⁴ ICC further stated that Treasury Rule 808 may become more relevant to Treasury clearing as the Treasury Business evolves.¹⁸⁵

Commission rules do not require or prohibit the use of a particular default management tool, such as VMGH.¹⁸⁶ As such, ICC has discretion regarding the tools it will use to manage a default in its Treasury Business, including VMGH, subject to consistency with the Exchange Act and the rules thereunder.¹⁸⁷ As the Commission has noted in other instances, tools like VMGH, which allocate losses to non-defaulting customers, may be necessary to prevent the potential transmission of systemic risk.¹⁸⁸ Even if, as suggested by commenters, VMGH is not appropriate for repo clearing because it could cause liquidity concerns and exacerbate stressed market conditions, Commission

rules and the applicable Exchange Act standards do not address such issues or prohibit ICC from using VMGH or maintaining it as a tool to use at least in limited circumstances. Accordingly, ICC's approach is consistent with Commission rules.

Regarding default management, one commenter described ICC's corporate contribution to the default waterfall as "dynamic and capped at a relatively high level" and recommended "the SEC evaluate the amount, structure, and adjustment cadence to assess the adequacy of the ICC contribution."¹⁸⁹ As further described in Treasury Rule 801(b), ICC's total expected contribution is \$100 million.¹⁹⁰

The appropriate amount of a clearing agency's own contribution to its default management process varies depending on the structure of the clearing agency, the characteristics of the assets cleared, and the markets served by the clearing agency, and registered clearing agencies have taken different approaches to applying their own resources to the default management process. The Commission does not require that a CCA have "skin-in-the-game" to address or allocate losses, and Rule 17Ad-22(e)(4)(iii) does not require any particular amount of "skin-in-the-game."¹⁹¹ Previously, the Commission has considered commenters' views regarding requirements for "skin-in-the-game," stating that such new requirements can help successfully manage the divergent incentives of a CCA's owners and participants and could be appropriate in the future.¹⁹² However, as the Commission has also stated, it is appropriate to provide a CCA with flexibility, subject to its responsibilities as a self-regulatory organizations ("SRO") under the Exchange Act, to structure its default management processes to take into account the particulars of its financial resources, ownership structures, and risk management frameworks.¹⁹³ Furthermore, the proper alignment of incentives is an important element of a CCA's risk management practices, and "skin-in-the-game" may play a role in those risk management practices in many instances but in other instances

¹⁸¹ FIA at 10; ISDA at 6.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ ICC Response Letter at 5.

¹⁸⁵ *Id.*

¹⁸⁶ See CCA Standards Adopting Release, *supra* note 6, 81 FR at 70829 ("Rule 17Ad-22(e) does not prescribe a specific tool or arrangement to achieve its requirements . . . when determining the content of its policies and procedures with respect to default management, each covered clearing agency must have the ability to enhance its policies and procedures to meet the evolving challenges and risks in the securities market that the covered clearing agency serves.").

¹⁸⁷ See Covered Clearing Agency Resilience and Recovery and Orderly Wind-Down Plans, Release No. 34-101446 (Oct. 25, 2024), 89 FR 91000, 91022 (Nov. 18, 2024) ("RWP Adopting Release") ("The Commission also disagrees that prescribing the tools a CCA must deploy in recovery and wind-down scenarios would be most effective at protecting non-defaulting customers' assets. As the Commission has previously explained, a 'one-size-fits-all' approach specifying recovery and orderly wind-down tools is not productive, and it is not possible to assess the utility of a particular tool in isolation without considering the context of RWP as a whole and the particular circumstances of a CCA.").

¹⁸⁸ *Id.* at 91022 ("tools . . . to allocate losses to non-defaulting customers may be necessary to prevent the potential transmission of systemic risk").

¹⁸⁹ SIFMA & AMG at 12.

¹⁹⁰ Treasury Rule 801(b); Exhibit J of the Application, at 6.

¹⁹¹ See RWP Adopting Release, *supra* note 187187, 89 FR at 91037; CCA Standards Adopting Release, *supra* note 6, 81 FR at 70805-06.

¹⁹² See RWP Adopting Release, *supra* note 187187, 89 FR at 91037; Clearing Agency Governance Release, *supra* note 69, at 84504; CCA Standards Adopting Release, *supra* note 6, 81 FR at 70806.

¹⁹³ See CCA Standards Adopting Release, *supra* note 6, 81 FR at 70806.

¹⁷⁵ Treasury Rule 812(b). In connection with this, ICC may impose a liquidity assessment on Treasury Participants to transfer additional cash in an amount determined by ICC in accordance with Treasury Rule 812(b)(vi).

¹⁷⁶ Treasury Rule 812(b).

¹⁷⁷ FIA at 12-13; ISDA at 8-9; and SIFMA & AMG at 13. These requests for legal opinions relate to ICC's ability to safeguard securities and funds for which it is responsible, which implicate the Commission's required determination in Section 17A(b)(3)(F) of the Exchange Act. See *supra* section III.E.

¹⁷⁸ ICC Response Letter at 7-8.

¹⁷⁹ *Id.*

¹⁸⁰ See CCA Standards Adopting Release, *supra* note 6, 81 FR at 70801-02.

may not be essential to a governance framework.¹⁹⁴ ICC is afforded this flexibility under the CCA regulatory framework and has the discretion to size its corporate contribution subject to its obligations and responsibilities as an SRO under the Exchange Act. Setting aside the size of the corporation contribution ICC determines to include in its default waterfall, ICC is required by Rule 17Ad–22(e)(4)(iii) to maintain written policies and procedures reasonably designed to maintain financial resources to cover a wide range of foreseeable stress scenarios, including the default of the largest participant family in extreme but plausible market conditions.¹⁹⁵ For the reasons previously discussed in Part III.E.2.c), the Treasury Rules are consistent with the requirements of Rule 17Ad–22(e)(4)(iii).

F. Participant Discipline

1. Statutory Standard and Analysis: Section 17A(b)(3)(G)

Section 17A(b)(3)(G) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to Sections 17(d) or 19(g)(2) of the Exchange Act) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

With respect to discipline and sanctions, Treasury Rule 609(a) provides that ICC has the power to discipline Treasury Participants, including by suspension or revocation of clearing privileges, for engaging in conduct inconsistent with just and equitable principles of trade or for any act or practice, or the omission thereof, that violates ICC's rules or procedures.¹⁹⁶ ICC also has the power to assess fines or charges against a Treasury Participant in accordance with the process outlined in Chapter 7 of the Treasury Rules.¹⁹⁷

Chapter 7 of the Treasury Rules sets out a process for ICC to use when disciplining Treasury Participants. Treasury Rule 701 provides that ICC has the authority to initiate and conduct investigations of conduct that is inconsistent with just and equitable principles or violations of ICC's rules

and procedures.¹⁹⁸ This authority is generally vested in the ICC Chief Compliance Officer, other ICC employees, and ICC's Business Conduct Committee.¹⁹⁹ Chapter 7 outlines the requirements for a formal hearing on a disciplinary action, including notice to the Treasury Participant, a written answer by the Treasury Participant, and the right to request a hearing before a hearing panel.²⁰⁰ Per Treasury Rule 712, if the hearing panel finds that a Treasury Participant committed an alleged violation, it must render a written decision to that effect, and the written decision must include an order stating any penalty imposed.²⁰¹ The penalty shall be one or more of the following: (i) a cease and desist order or reprimand; (ii) a fine up to one hundred thousand dollars for each violation plus the monetary value of any benefit received as a result of the alleged violation; and (iii) a recommendation to the Board to impose a suspension or revocation of clearing privileges or a termination of Treasury Participant status.

Further, Rule 207 of the ICC Treasury Clearing Rules provides that in the case of a Termination Event,²⁰² ICC may, in its sole discretion, terminate the status of a Treasury Participant, subject to Rule 615(b).²⁰³

Commenters stated that ICC's proposed fines could be excessive if imposed for each failure to submit a transaction for clearing in accordance with Treasury Rule 303.²⁰⁴ Treasury Rule 303 generally requires each Treasury Participant to submit to ICC or another covered clearing agency (as defined in Exchange Act Rule 17Ad–22) for clearing all Trades in Contracts that are eligible for clearing and are Eligible Secondary Market Transactions, in

furtherance of Rule 17Ad–22(e)(18)(iv).²⁰⁵ These commenters asked ICC to consider good-faith efforts to remedy failures and further that ICC allow Treasury Participants to (i) initially notify ICC of non-compliance with the trade submission requirement, then (ii) work to remediate the issue that may have caused the non-compliance, without the imposition of penalties. In response, ICC explained that the fines are for general application, not particular to Treasury Rule 303, and provide a fair procedure for disciplining Treasury Participants.²⁰⁶ ICC further explained that the fines are not automatic for violations of the Treasury Rules, including Rule 303.²⁰⁷ ICC cited, for example, Treasury Rule 702(d), which allows ICC to issue a warning letter to a Treasury Participant.

ICC has procedures for enforcing rules and disciplining Treasury Participants that are consistent with the requirements of the Exchange Act. ICC's rules provide it with authority to discipline Treasury Participants for rule violations and to impose each of the sanctions enumerated in the Exchange Act. Accordingly, the Commission determines that the Treasury Rules provide that ICC's Treasury Participants shall be appropriately disciplined for violation of any provision of the rules consistent with the requirements of Section 17A(b)(3)(G) of the Exchange Act.

2. Statutory Standard and Analysis: Section 17A(b)(3)(H)

Section 17A(b)(3)(H) of the Exchange Act states that a clearing agency shall not be registered unless the Commission determines that the rules of the clearing agency, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any persons seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.²⁰⁸

²⁰⁵ 17 CFR 240.17ad–22(e)(18)(iv). Commenters also requested clarifications to certain parts of Rule 303, such as allowing trades to continue bilaterally if rejected by ICC; excepting trades that fail to submit to ICC because of technological issues; and incorporating into the definition of Eligible Secondary Market Transaction any future definitions or interpretations issued by the Commission. See FIA at 6; ISDA at 2–3; SIFMA & AMG at 11. In response, ICC explained that it intends Treasury Rule 303 to comply with Rule 17Ad–22(e)(18)(iv). ICC Response Letter at 4.

²⁰⁶ ICC Response Letter at 4.

²⁰⁷ *Id.*

²⁰⁸ Section 17A(b)(3)(H) of the Exchange Act also states that the rules of the clearing agency must be in accordance with the provisions of Section 17A(b)(5) of the Exchange Act.

¹⁹⁴ See *id.*

¹⁹⁵ See 17 CFR 240.17ad–22(e)(4)(iii).

¹⁹⁶ Treasury Rule 609(a).

¹⁹⁷ Treasury Rule 609(b).

¹⁹⁸ Treasury Rule 701.

¹⁹⁹ Treasury Rules 702 and 703. Per Treasury Rule 703(b), the Business Conduct Committee shall be comprised of the independent managers of the ICC Board.

²⁰⁰ Treasury Rules 704, 705, 706, 711, and 712.

²⁰¹ Treasury Rule 712.

²⁰² Termination Event is defined in Treasury Rule 207(b) to mean, among other things, the default of a Treasury Participant and the material breach by the Treasury Participant of the Treasury Rules or any of the terms or provisions of any agreement between ICC and the Treasury Participant which is not remedied promptly after notice from ICC.

²⁰³ Rule 615(b) of ICC Treasury Clearing Rules provides, in part, that “[a]ny determination to suspend or revoke the clearing privileges of a Treasury Participant, or to terminate its status as a Treasury Participant, granted to [ICC] pursuant to these Rules or the Treasury Procedures, including, without limitation, as provided in Rules 203(a), 207(a) and 609(a), shall be made only with the consent of the Board (in a vote excluding any member who is an employee of such Treasury Participant or any Affiliate). . . .”

²⁰⁴ FIA at 7; ISDA at 3.

Chapter 7 of the Treasury Rules sets out a process for ICC to use when disciplining Treasury Participants. Treasury Rule 701 allows ICC to initiate and conduct investigations of conduct that is inconsistent with just and equitable principles or violations of ICC's rules and procedures and which is allegedly committed by Treasury Participants, and impose sanctions for such conduct.²⁰⁹ This authority is generally vested in the ICC Chief Compliance Officer, other ICC employees, and ICC's Business Conduct Committee, which is comprised of the independent managers of the ICC Board.²¹⁰ More specifically, ICC staff conducts investigations of possible violations, prepares written reports respecting such investigations, furnishes such reports to the Chief Compliance Officer and Business Conduct Committee, and conducts the prosecution of such violations.²¹¹ The Business Conduct Committee can direct that an investigation of any suspected violation be conducted by ICC and shall hear any matter referred to it.²¹² Moreover, the Business Conduct Committee may, as it deems appropriate, establish a subcommittee of three members (the "Review Subcommittee"), to receive and review written investigation reports and written settlement agreements.²¹³

Chapter 7 requires that ICC provide notice to a Treasury Participant during an investigation and potential disciplinary action. Where a Treasury Participant is the subject of a written report regarding ICC staff's investigation of a potential violation, ICC staff must provide the Treasury Participant with a copy of that written report.²¹⁴ ICC staff must provide the report no less than five business days prior to distributing the report to the Review Subcommittee of the Business Conduct Committee. ICC staff must also give the Treasury Participant an opportunity to submit written comments regarding or evidence relevant to the report.²¹⁵ Any written comments received from the Treasury Participant must accompany

distribution of the report to the Review Subcommittee or be furnished to the Review Subcommittee at or before the time of its meeting, depending on the date on which the Treasury Participant's comments are received by ICC staff.²¹⁶

If, after initial review of an investigation report, a Review Subcommittee concludes that a violation may have occurred, it must allow the Treasury Participant a reasonable opportunity to prepare and present evidence.²¹⁷ If the Review Subcommittee then concludes that a violation may have occurred, the Review Subcommittee must advise the Treasury Participant of that fact.²¹⁸ The Review Subcommittee may then (i) refer the matter back to ICC staff for further investigation; (ii) approve a pre-negotiated settlement agreement; (iii) refer the matter to a formal hearing of a Hearing Panel;²¹⁹ or (iv) negotiate and enter into a written settlement agreement on its own.

If the Review Subcommittee refers the matter to a formal hearing in front of a Hearing Panel, then ICC staff must serve a notice on the Treasury Participant.²²⁰ The notice must include certain information, such as the acts in which the Treasury Participant is alleged to have engaged and how those acts violate ICC's rules or procedures.²²¹ Finally, if the Hearing Panel finds that a Treasury Participant committed an alleged violation, it must issue a written decision to that effect, and the written decision must include a penalty.²²²

In addition to the requirements related to informing a Treasury Participant, Chapter 7 includes other requirements intended to enhance the fairness of ICC's disciplinary process, such as independence of the people hearing the matter. As described above, the Business Conduct Committee must be comprised of ICC's independent Board members.²²³ If a member of a Review Subcommittee believes he or she has a direct financial, personal or other interest in the matter under

consideration, the member must notify the Business Conduct Committee, and the Business Conduct Committee must replace such person on the Review Subcommittee for that particular matter.²²⁴ No member of the Hearing Panel may hear a case in which that member, in the determination of the Chairman of the Business Conduct Committee, has a direct financial, personal or other interest in the matter under consideration.²²⁵ Finally, Treasury Rule 708 gives Treasury Participants a means of challenging the inclusion of a member of the Hearing Panel for cause.

Throughout the disciplinary process, Treasury Participants may respond to the investigation and allegations. As described above, if, after initial review of an investigation report, a Review Subcommittee concludes that a violation may have occurred, it must allow the Treasury Participant a reasonable opportunity to prepare and present evidence.²²⁶ Treasury Rule 705 gives a Treasury Participant the ability to serve a written answer on ICC, following service of a written notice of charges. A Treasury Participant will have an opportunity for a hearing in front of the Hearing Panel, and during such hearing the Treasury Participant may, among other things, be represented by legal counsel or any other representative of its choosing; present witnesses and documentary evidence; and cross-examine witnesses.²²⁷

As described, ICC has established procedures to ensure that any Treasury Participant assessed with a rule violation receives notice of the alleged violation, and is afforded an opportunity to contest the allegations, including by requesting a hearing at which the participant may be represented by counsel. The Treasury Rules address discipline of Treasury Participants, denial of participation, and prohibitions or limitations imposed by the clearing agency with respect to access to services offered by the clearing agency. The Commission therefore determines that the Treasury Rules provide a fair procedure consistent with Section 17A(b)(3)(H) of the Exchange Act.

G. Burden on Competition

1. Statutory Standard: Section 17A(b)(3)(I)

Section 17A(b)(3)(I) of the Exchange Act states that a clearing agency shall not be registered unless the Commission

²¹⁶ *Id.*

²¹⁷ Treasury Rule 703(d).

²¹⁸ Treasury Rule 703(e).

²¹⁹ The Hearing Panel must consist of three members of the Business Conduct Committee, selected by the Chairman of that committee, who were not on the Review Subcommittee for the alleged violation and are not otherwise ineligible.

²²⁰ Treasury Rule 704.

²²¹ *Id.*

²²² Treasury Rule 712. The written decision must include certain information, including a summary of the allegations and a summary of the Treasury Participant's answer. If the Hearing Panel finds that a Treasury Participant did not commit an alleged violation, it must also render a written decision to that effect. Treasury Rule 712.

²²³ Treasury Rule 703(b).

²²⁴ Treasury Rule 703(c).

²²⁵ Treasury Rule 707(c).

²²⁶ Treasury Rule 702(c).

²²⁷ Treasury Rules 711 and 712.

²⁰⁹ Treasury Rule 701.

²¹⁰ Treasury Rules 702 and 703.

²¹¹ Treasury Rule 702(b).

²¹² Treasury Rule 703(a).

²¹³ Treasury Rule 703(c). Treasury Rule 702(d) also allows the ICC President, Chief Compliance Officer, or another ICC employee designated by the Board, to conclude that a violation may have occurred. In that case, the President, Chief Compliance Officer, or other employee may issue a warning letter or negotiate a written settlement agreement. A Review Subcommittee of the Business Conduct Committee must approve the written settlement agreement.

²¹⁴ Treasury Rule 702(c).

²¹⁵ *Id.*

determines that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

2. Summary of Application and Analysis

As discussed in Part III.B, ICC's rules permit all of the participant categories required by Section 17A(b)(3)(B) of the Exchange Act to be Treasury Participants.²²⁸ In addition, as contemplated by Section 17A(b)(4)(B), ICC may deny participation to, or condition the participation of, a Treasury Participant if the Treasury Participant does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of ICC.²²⁹

Commenters that supported ICC's Application stated that the inclusion of another clearing agency for the Treasury market would provide competition and increase resilience and diversity in clearing models.²³⁰ One commenter, supporting ICC's Application, stated that approval will provide needed competition and increase choice for participants in the Treasury market.²³¹ This commenter further stated that ICC's model will allow Treasury Participants to offer done-away clearing services in a balance sheet-efficient and operationally familiar manner, thus offering capital and operational efficiencies and reducing costs.²³² The Commission agrees that the inclusion of another clearing agency for the Treasury market could provide competition and

increase resilience, choice, and diversity in clearing models.

More generally, in the context of establishing standards for participation, ICC's Treasury Rules may impact competition among market participants by restricting access of its clearing services for market participants unable to meet its standards for participation; however, such a burden on competition can be in furtherance of, and consistent with, the Exchange Act, including Sections 17A(b)(3)(B), 17A(b)(4)(B), and 17A(b)(3)(F) thereof.²³³ Consistent with Section 17A(b)(4)(B) of the Exchange Act, for example, ICC may deny participation or condition participation based on its rules' standards for "financial responsibility, operational capability, experience, and competence."²³⁴ Because such participation requirements enable ICC to manage, mitigate, and, where possible, reduce the risk it faces in its capacity as a CCP, the Commission determines that ICC's Treasury Rules are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.²³⁵ Similarly, should ICC's financial and operational competency standards impact competition, these standards are in the furtherance of assuring ICC's safeguarding of securities and funds in ICC's custody or control. Therefore, the Commission determines that ICC's Treasury Rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²³⁶

IV. Conclusion

For the reasons discussed above, the Commission finds that ICC satisfies the requirements for registration as a clearing agency, including those requirements set forth in Section 17A of the Exchange Act and Commission rules and regulations thereunder.²³⁷

It is hereby ordered that the application for registration as a clearing agency filed by ICE Clear Credit LLC (File No. 600-45) pursuant to Sections 17A and 19(a) of the Exchange Act be, and hereby is, *approved*.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02333 Filed 2-5-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0273]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 17Ad-10

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("SEC" or "Commission") is submitting to the Office of Management and Budget ("OMB") this request for extension of the proposed collection of information provided for in Rule 17Ad-10 (17 CFR 240.17Ad-10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad-10 generally requires registered transfer agents to: (1) create and maintain current and accurate securityholder records; (2) promptly and accurately record all transfers, purchases, redemptions, and issuances, and notify their appropriate regulatory agency if they are unable to do so; (3) exercise diligent and continuous attention in resolving record inaccuracies; (4) disclose to the issuers for whom they perform transfer agent functions and to their appropriate regulatory agency information regarding record inaccuracies; (5) buy-in certain record inaccuracies that result in a physical over issuance of securities; and (6) communicate with other transfer agents related to the same issuer.

These requirements assist in the creation and maintenance of accurate securityholder records, enhance the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding over issuance.

The rule also has specific recordkeeping requirements. It requires registered transfer agents to retain certificate detail that has been deleted for six years and keep current an accurate record of the number of shares or principal dollar amount of debt securities that the issuer has authorized to be outstanding. These mandatory requirements ensure accurate securityholder records and assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

²²⁸ As stated above, one commenter recommended that ICC explicitly permit FCMs to become Treasury Participants and adjust its rules to allow FCMs to do so. FIA at 3-5. In response, ICC explained that Treasury Rule 201(c) is non-exclusive, and ICC may accept FCMs as Treasury Participants provided that they meet and maintain the ICC participation standards set out in Treasury Rule 201(b). ICC Response Letter at 3. FCMs are not among the list of the types of persons listed in Section 17A(b)(3)(B) of the Exchange Act, and Commission rules do not require a particular access model. A CCA in the U.S. Treasury market, however, generally should seek to provide access in as flexible a means as possible, consistent with its responsibility to provide sound risk management and comply with other provisions of the Exchange Act, the Covered Clearing Agency Standards, and other applicable regulatory requirements, and it generally should consider a wide variety of appropriate means to facilitate access to clearance and settlement services of all eligible secondary market transactions in U.S. Treasury securities, including those of indirect participants. *See* Release No. 34-99149 (Dec. 13, 2023), 89 FR 2714, 2760 (Jan. 16, 2024).

²²⁹ *See* Treasury Rules 201-203.

²³⁰ FIA at 1; ISDA at 1.

²³¹ AIMA at 2.

²³² *Id.*

²³³ 15 U.S.C. 78q-1(b)(3)(B), (b)(4)(B), (b)(3)(F).

²³⁴ 15 U.S.C. 78q-1(b)(4)(B).

²³⁵ 15 U.S.C. 78q-1(b)(3)(F).

²³⁶ 15 U.S.C. 78q-1(b)(3)(F).

²³⁷ 15 U.S.C. 78q-1(b)(3).

There are approximately 319 registered transfer agents. We estimate that the average number of hours necessary for each transfer agent to comply with Rule 17Ad-10 is approximately 80 hours per year (70 hours of recordkeeping and 10 hours of third-party disclosure), which generates an industry-wide annual burden of approximately 25,520 hours (319 registered transfer agents $\times$ 80 hours). At an average staff cost of \$78 per hour, the industry-wide internal labor cost of compliance (a monetization of the burden hours) is approximately \$1,990,560 per year (25,520 hours $\times$ \$78 per hour).¹

The amount of time any particular transfer agent will devote to Rule 17Ad-10 compliance will vary according to the size and scope of the transfer agent's business activity. We note, however, that at least some of the records, processes, and communications required by Rule 17Ad-10 would likely be maintained, generated, and used for transfer agent business purposes even without the rule.

In addition, we estimate that each transfer agent will incur an annual external cost burden of approximately \$24,660 resulting from the collection of information—90% of which will be attributable to recordkeeping and 10% of which will be attributable to third-party disclosure (\$22,194 from recordkeeping (\$24,660 $\times$ 90%) and \$2,466 from third-party disclosure (\$24,660 $\times$ 10%)).² Therefore, the total annual external cost on the entire transfer agent industry is approximately \$7,866,540 (\$24,660 $\times$ 319 registered transfer agents)—\$7,079,886 will be attributable to recordkeeping (\$24,660 $\times$ 319 registered transfer agents) and \$786,654 of which will be attributable to third-party disclosure (\$2,466 $\times$ 319 registered transfer agents). This cost primarily reflects ongoing computer operations and maintenance associated with generating, maintaining, and disclosing or providing certain information required by the rule.

¹ We expect that performance of this function will most likely be performed by a general clerk. Based on data from the SIFMA Management and Professional Earnings Report, modified in 2025 by Commission staff to account for, among other things, inflation, we expect that the cost for this position is \$78 per hour. 80 hours $\times$ \$78 = \$6,240 total aggregate monetized cost per transfer agent.

² We expect that performance of this function will most likely be performed by a computer operations department manager. Based on data from the SIFMA Management and Professional Earnings Report, modified in 2025 by Commission staff to account for, among other things, inflation, we expect that the cost for this position is \$548 per hour. 45 hours $\times$ \$548 = approximately \$24,660 total aggregate external cost per transfer agent.

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 public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202511-3235-008 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by March 9, 2026.

Dated: February 4, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-02407 Filed 2-5-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0734]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 22c-1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 22c-1 (17 CFR 270.22c-1) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act" or "Act") enables a fund to choose to use "swing pricing" as a tool to mitigate shareholder dilution. Rule 22c-1 is intended to promote investor protection by providing funds with an additional tool to mitigate the potentially dilutive effects of shareholder purchase or redemption activity and a set of operational standards that allow funds to gain comfort using swing pricing as a means of mitigating potential dilution.

The respondents to amended rule 22c-1 are open-end management investment companies (other than money market funds or exchange-traded funds) that engage in swing pricing. Compliance with rule 22c-1(a)(3) is mandatory for any fund that chooses to use swing pricing to adjust its NAV in reliance on the rule.

While we are not aware of any funds that have engaged in swing pricing,¹ we are estimating for the purpose of this analysis that 5 fund complexes have funds that may adopt swing pricing policies and procedures in the future pursuant to the rule. We estimate that the total burden associated with the preparation and approval of swing pricing policies and procedures by those fund complexes that would use swing pricing will be 280 hours.² We also estimate that it will cost a fund complex \$77,038 to document, review and initially approve these policies and procedures, for a total cost of \$385,190.³

Rule 22c-1 requires a fund that uses swing pricing to maintain the fund's swing pricing policies and procedures that are in effect, or at any time within the past six years were in effect, in an easily accessible place.⁴ The rule also requires a fund to retain a written copy of the periodic report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including the impact on mitigating dilution and any back-testing performed.⁵ The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with its swing pricing policies and procedures and with rule 22c-1. We estimate a time cost per fund complex of \$388.⁶ We estimate that the

¹ No funds have engaged in swing pricing as reported on Form N-CEN as of October 31, 2025.

² This estimate is based on the following calculation: (48 + 2 + 6) hours $\times$ 5 fund complexes = 280 hours.

³ These estimates are based on the following calculations: 24 hours $\times$ \$266 (hourly rate for a senior accountant) = \$6,384; 24 hours $\times$ \$612 (blended hourly rate for assistant general counsel (\$573) and chief compliance officer (\$652)) = \$14,688; 2 hours (for a fund attorney's time to prepare materials for the board's determinations) $\times$ \$449 (hourly rate for a compliance attorney) = \$898; 6 hours $\times$ \$9,178 (hourly rate for a board of 9 directors) = \$55,068; (\$6,384 + \$14,688 + \$898 + \$55,068) = \$77,038; \$77,038 $\times$ 5 fund complexes = \$385,190; the estimated hourly wages are based on SIFMA's report on Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and inflation, and adjusted to account for bonuses, firm size, employee benefits, and overhead; the staff has estimated the average cost of board of director time as \$9,178 per hour for the board as a whole, based on information received from funds and their counsel.

⁴ See rule 22c-1(a)(3)(iii).

⁵ See *id.*

⁶ This estimate is based on the following calculations: 2 hours $\times$ \$77 (hourly rate for a general clerk) = \$154; 2 hours $\times$ \$117 (hourly rate for a senior computer operator) = \$234. \$154 + \$234 = \$388.

total for recordkeeping related to swing pricing will be 20 hours, at an aggregate cost of \$1,940, for all fund complexes that we believe include funds that have adopted swing pricing policies and procedures.⁷

Amortized over a three-year period, we believe that the hour burdens and time costs associated with rule 22c-1, including the burden associated with the requirements that funds adopt policies and procedures, obtain board approval, and periodic review of an annual written report from the swing pricing administrator, and retain certain records and written reports related to swing pricing, will result in an average aggregate annual burden of 113.3 hours, and average aggregate time costs of \$130,336.⁸ We also estimate that rule 22c-1 imposes a total external cost burden of \$2,920 for outside legal services related to compliance with the policies and procedures requirement.⁹

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

This collection of information is necessary to obtain a benefit and will not be kept confidential. 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 public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202512-3235-001 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by March 9, 2026.

Dated: February 4, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02406 Filed 2-5-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0738]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rules 13n-4(b)(9), (b)(10) and (d)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or “Commission”) is submitting to the Office of Management and Budget (OMB) this request for an extension of the collection of information.

Rules 13n-4(b)(9), (b)(10) and (d) implement Exchange Act sections 13(n)(5)(G) and (H), which conditionally require a security-based swap data repository (“SBSDR”) registered with the Commission to make available security-based swap data obtained by the SBSDR (“SBS Data”) to certain U.S. government entities and any other person that the Commission determines to be appropriate. The rules, in part, condition such sharing of SBS Data on there being an arrangement between the Commission and the relevant entity (in the form of a memorandum of understanding or otherwise) to address the confidentiality of the SBS Data. The rules further require SBSDRs to create and maintain records regarding such data access. Pursuant to the Commission’s authority, regulators or other authorities that are not otherwise designated by statute or rule may request from the Commission that they be deemed eligible to access SBS Data.

Implementation of the statutory and regulatory SBS Data access provisions—including the confidentiality condition and the Commission’s authority to designate entities to access SBS Data—facilitates regulatory oversight of the security-based swap market and its participants, including oversight of systemic and other risks associated with the market. Implementation also promotes compliance with applicable laws and regulations, including but not limited to compliance with the antifraud provisions of the federal securities laws.

Commission staff estimates that the total annual burden associated with Rules 13n-4(b)(9), (b)(10) and (d) is 11,405 hours and \$120,000, calculated as follows:

Commission staff estimates a total of 50 regulators or other authorities will

enter into confidentiality arrangements with the Commission to obtain access to SBS Data pursuant to these provisions. On average, each of those recipients of data is expected to expend 500 hours in connection with negotiating these MOUs or other arrangements, for a one-time aggregate burden of 25,000 hours, with no associated ongoing burdens. This equates to 8,333 hours per year when annualized over three years.

Commission staff estimates that a total of 41 regulators or other authorities (that otherwise are not identified by statute or the rules as being eligible for access to SBS Data) may request that the Commission determine they are eligible to access SBS Data. On average, each of those entities is expected to expend 40 hours in connection with such requests, for a one-time aggregate burden of 1,640 hours, with no associated ongoing burdens. This equates to 547 hours per year when annualized over three years.

Commission staff also estimates that a total of three SBSDRs may be expected to incur systems-related costs associated with setting up access to SBS Data for regulators and other authorities. On average, each SBSDR is expected to expend 1,300 hours in connection with providing such connectivity (based on each SBSDR incurring 26 hours per recipient, for 50 total recipients), for a one-time aggregate burden of 3,900 hours, with no associated ongoing burdens. This equates to 1,300 hours when annualized over three years.

In addition, Commission staff estimates that a total of three SBSDRs may incur costs associated with the requirement to notify the Commission when an SBSDR receives the first request for SBS Data from a particular entity. On average, each SBSDR is expected to expend 25 hours in connection with this notice requirement (based on each SBSDR providing 50 notices, at half-hour per notice), for a one-time aggregate burden of 75 hours, with no associated ongoing burdens. This equates to 25 hours per year when annualized over three years.

Commission staff estimates that a total of three SBSDRs may incur costs associated with the requirement that an SBSDR maintain records of all information related to initial and subsequent requests for SBS Data access. On average, compliance with this provision is expected to require 360 hours initially and 280 hours annually per SBSDR, for a total burden of 1,080 hours initially and 840 hours annually across three SBSDRs. This equates to 1,200 hours per year when annualized over three years. Commission staff further estimates that each of the three SBSDRs will require \$40,000 annually

⁷ These estimates are based on the following calculations: 4 hours × 5 fund complexes = 20 hours. 5 fund complexes × \$388 = \$1,940.

⁸ These estimates are based on the following calculations: (280 hours (year 1) + (3 × 20 hours) (years 1, 2 and 3)) ÷ 3 = 113.3 hours; (\$385,190 (year 1) + (3 × \$1,940) (years 1, 2 and 3)) ÷ 3 = \$130,336.

⁹ This estimated burden is based on the estimated wage rate of \$584 per hour for outside legal services and the following calculation: \$584 × 5 fund complexes = \$2,920.

in connection with that requirement, for a total cost of \$120,000 annually across three SBSDRs.

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 public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202511-3235-009 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by March 9, 2026.

Dated: February 4, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02408 Filed 2-5-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0771]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 3a71-3(d)

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or “Commission”) is submitting to the Office of Management and Budget (OMB) this request for an extension of the collection of information.

Rule 3a71-3 under the Exchange Act provides in part that, for purposes of determining whether they can avail themselves of the *de minimis* exception to the “security-based swap dealer” definition, non-U.S. persons must count certain dealing transactions with non-U.S. counterparties that have been “arranged, negotiated, or executed” by personnel in the United States. Rule 3a71-3(d) provides an exception from that “arranged, negotiated, or executed” counting requirement. The information collection is required to obtain or retain a benefit and the information is used by the Commission to monitor compliance with the exception to provisions of Exchange Act Rule 3a71-3 that otherwise would require non-U.S. persons to count—against the thresholds associated with the *de minimis* exception to the “security-based swap

dealer” definition—security-based swap dealing transactions with non-U.S. counterparties when U.S. personnel arrange, negotiate, or execute those transactions.

The Commission continues to estimate that up to 24 entities may seek to rely on the exception to the *de minimis* counting requirement of Rule 3a71-3. In connection with the conditions to the exception, each of those up to 24 entities would make use of an affiliated registered security-based swap dealer or registered broker. In general, the registered entity would be required to comply with the collections of information. Applications for “listed jurisdiction” status may be submitted by the up to 24 relying entities, but the staff believes that the greater portion of such applications will be submitted by foreign financial authorities.

The Commission continues to estimate that the aggregate yearly reporting burden for Rule 3a71-3(d), for all respondents, is approximately 235,242.44 hours per year. In addition, to account for inflation, the Commission estimates that the aggregate annual cost for all of Rule 3a71-3(d) for all respondents is approximately \$1,359,778.96 per year. A detailed break-down of the burdens applicable to each type of entity is provided in the supporting statement.

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 public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202511-3235-007 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by March 9, 2026.

Dated: February 4, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-02409 Filed 2-5-26; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21431 and #21432; California Disaster Number CA-20039]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of CALIFORNIA dated February 3, 2026. Incident: 2026 Early January Storm, Tidal Flooding and King Tides.

DATES: Issued on February 3, 2026.

Incident Period: December 31, 2025 through January 5, 2026.

Physical Loan Application Deadline Date: April 6, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: November 3, 2026.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator’s disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Humboldt.

Contiguous Counties:

California: Del Norte, Mendocino, Siskiyou, Trinity.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

	Percent
Private Non-Profit Organiza- tions without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 21431B and for economic injury is 214320.

The state which received an SBA Administrative declaration is California.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026-02442 Filed 2-5-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[License No. 09090480]

Norwest Strategic Capital, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under Section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 09/09-0480 issued to Norwest Strategic Capital, L.P., said license is hereby declared null and void.

Paul Salgado,

*Director, Investment Portfolio Management,
United States Small Business Administration.*

[FR Doc. 2026-02374 Filed 2-5-26; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21433 and #21434;
CALIFORNIA Disaster Number CA-20038]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business
Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of CALIFORNIA dated February 3, 2026.

Incident: 2025 Late December Storm.

DATES: Issued on February 3, 2026.

Incident Period: December 16, 2025
through December 26, 2025.

*Physical Loan Application Deadline
Date:* April 6, 2026.

*Economic Injury (EIDL) Loan
Application Deadline Date:* November 3,
2026.

ADDRESSES: Visit the MySBA Loan
Portal at <https://lending.sba.gov> to
apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:
Sharon Henderson, Office of Disaster
Recovery and Resilience, U.S. Small
Business Administration, 409 3rd Street
SW, Suite 6050, Washington, DC 20416,
(202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is
hereby given as a result of the
Administrator's disaster declaration,
applications for disaster loans may be
submitted online using the MySBA
Loan Portal <https://lending.sba.gov> or in
person at other locally announced
locations. For further assistance please
contact the SBA disaster assistance
customer service center by email at
disastercustomerservice@sba.gov or by
phone at 1-800-659-2955. If you are
deaf, hard of hearing, or have a speech
disability, please dial 7-1-1 to access
telecommunications relay services.

The following areas have been
determined to be adversely affected by
the disaster:

Primary Counties: San Bernardino,
Shasta.

Contiguous Counties:

California: Inyo, Kern, Lassen, Los
Angeles, Modoc, Orange, Plumas,
Riverside, Siskiyou, Tehama,
Trinity.

Arizona: La Paz, Mohave.

Nevada: Clark.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Avail- able Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Avail- able Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organiza- tions with Credit Available Elsewhere	3.625
Private Non-Profit Organiza- tions without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organiza- tions without Credit Available Elsewhere	3.625

The number assigned to this disaster
for physical damage is 214336 and for
economic injury is 214340.

The states which received an SBA
Administrative declaration are Arizona,
California, Nevada.

(Catalog of Federal Domestic Assistance
Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

*Associate Administrator, Office of Disaster
Recovery & Resilience.*

[FR Doc. 2026-02443 Filed 2-5-26; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12941]

Private Sector Participation in Domestic and International Events on Spaceflight Safety, Responsible Practices, and Commercial Space

ACTION: Notice.

SUMMARY: The U.S. Department of State
seeks private sector participation in a
series of domestic and international
events promoting the safe and
responsible exploration and use of outer
space. Participation of the commercial
space sector, academia and other non-
governmental organizations in these
events will assist the Department of
State in fulfilling its responsibilities
pursuant to the 2020 National Space
Policy and in alignment with Executive
Order 14335, "Enabling Competition in
the Commercial Space Industry," and
Executive Order 14369, "Ensuring
American Space Superiority." Private
sector participation will also help
inform the United States' international
engagements and provide an
opportunity for participants to better
understand international perspectives
on pressing outer space issues.

DATES: Participants will provide their
perspectives on Department equities
and/or serve as private sector advisors
to U.S. delegations to one or more
workshops, meetings, symposia, and
other international events related to
safety, responsible behavior, space
policy and governance frameworks, and
commercial space activities until
December 31, 2026.

ADDRESSES: Solicitations for private
sector participation in specific events,
including event dates and locations,
will be posted at least 30 days prior to
the event on [https://www.state.gov/
remarks-and-releases-bureau-of-oceans-
and-international-environmental-and-
scientific-affairs/](https://www.state.gov/remarks-and-releases-bureau-of-oceans-and-international-environmental-and-scientific-affairs/).

FOR FURTHER INFORMATION CONTACT:
Foreign Affairs Officer, Office of Space
Affairs, Bureau of Oceans and
International Environmental and

Scientific Affairs, Department of State, Washington, DC 20522, email: vahanvatyz@state.gov, telephone: 1–(202)–674–5813.

SUPPLEMENTARY INFORMATION: Events will vary in location and format, to include fully online, hybrid, and in-person activities. Short notice modification of plans may be required in response to unpredictable factors. Meetings may be stand alone or on the margins of related events, which may include, but are not limited to, the United Nations Committee on the Peaceful Uses of Outer Space (UNCOPUOS) Scientific and Technical Subcommittee (STSC), the UNCOPUOS Legal Subcommittee (LSC), the UNCOPUOS plenary, events organized by the UN Office for Outer Space Affairs, U.S. bilateral dialogues on space with foreign partners, Artemis Accords-related meetings and events, international space conferences and trade shows, and other engagements. There may also be additional opportunities to provide expert views related to domestic policies and U.S. positions in other international diplomatic fora. Please note the limited number of slots for non-USG participation in many events. Participants should focus on the following:

Safety: Identify key safety issues for crewed and/or uncrewed outer space operations. Discuss current attempts to address these issues and suggest new challenges that may develop as private sector space activities advance and evolve.

Responsible Practices: Examine best practices and guidelines for safeguarding the outer space environment for future exploration and use. Examples include the implementation of UN non-binding guidelines on space, including the 2019 UNCOPUOS Long-Term Sustainability (LTS) guidelines, and the Artemis Accords.

Commercial Space Activities: Discuss the challenges to an economically viable space industry and how these challenges relate to the domestic regulatory and international governance frameworks. Share recent advances within the commercial space sector and how they may develop in the future. Evaluate how an expanding commercial sector may affect equities like U.S. economic prosperity, geopolitical relationships, scientific fields like astronomy, planetary protection, orbital debris mitigation, space resource utilization, and other aspects of safe and sustainable operations in outer space. Provide perspectives on current and

emerging foreign markets for U.S. goods and services, their supply chains, and related legal and regulatory frameworks. Identify trends, barriers, and opportunities to expand U.S. commercial activity in the field of novel space activities, including through international partnerships.

Facilitating Private Sector Input: Suggest ways to enhance collaboration between the U.S. government, foreign countries, and commercial space industry in the development of international best practices and related mechanisms, including at the United Nations level.

Valda M. Vikmanis-Keller,
Director, Office of Space Affairs, U.S.
Department of State.

[FR Doc. 2026–02318 Filed 2–5–26; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 751]

Materials Due To Be Submitted During the Federal Government Shutdown

AGENCY: Surface Transportation Board.
ACTION: Notice.

SUMMARY: The Board provides notice that any material due to be submitted to the Board during the Federal government shutdown period (including comments on environmental documents) will now be due no later than February 6, 2026, unless otherwise ordered by the Board. Filings (including recordings) that were submitted during the shutdown will be considered filed on February 4, 2026, provided all filing requirements have been met.

DATES: This notice is applicable February 4, 2026.

FOR FURTHER INFORMATION CONTACT: Scott Zimmerman, (202) 245–0386. If you require accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: By decision served February 2, 2026, all deadlines for the submission of pleadings, filings, comments (including environmental comments) and other material due to be submitted during the lapse in Board appropriations in effect that day were tolled. The Board is now providing notice that any material due to be submitted to the Board during the shutdown period (January 31, 2026, through February 3, 2026) will now be due no later than February 6, 2026, unless otherwise ordered by the Board.

Should a party to a proceeding believe that further modification to a procedural

schedule is necessary, the party should request an extension in that case docket. Materials submitted during the shutdown should not be resubmitted. All filings (including recordings) submitted during the shutdown will be considered filed on February 4, 2026, provided all filing requirements have been met.

Decided: February 4, 2026.

By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2026–02452 Filed 2–5–26; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Property at the Asheville Regional Airport, Fletcher, NC (AVL)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration is requesting public comment on a request by The Greater Asheville Regional Airport Authority on behalf of the Asheville Regional Airport, to release 84.08 acres of land identified on the current “Exhibit A” as Tracts C1, C2, and C3 at the Asheville Regional Airport (AVL) from federal obligations.

DATES: Comments must be received on or before March 9, 2026.

ADDRESSES: Comments on this notice may be emailed to the FAA at the following email address: [FAA/Memphis Airports District Office, Attn: Jamal R. Stovall, Lead Community Planner, \[Jamal.Stovall@faa.gov\]\(mailto:Jamal.Stovall@faa.gov\)](mailto:FAA/MemphisAirportsDistrictOffice,Attn:JamalR.Stovall,LeadCommunityPlanner,Jamal.Stovall@faa.gov).

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lew S. Bleiweis, President and CEO, Asheville Regional Airport at the following address: 61 Terminal Drive, Suite 1, Fletcher, NC 28732.

FOR FURTHER INFORMATION CONTACT: Jamal R. Stovall, Lead Community Planner, Federal Aviation Administration, Memphis Airports District Office, 2600, Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118–2482, Jamal.Stovall@faa.gov. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property for disposal at the Asheville Regional Airport (AVL), 61 Terminal

Drive, Suite 1 Fletcher, NC 28732, under the provisions of 49 U.S.C. 47107(h)(2). The FAA determined that the request to release property at the Asheville Regional Airport (AVL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of this property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The request consists of the following:

The Greater Asheville Regional Airport Authority (GARAA), the Sponsor of the Asheville Regional Airport, requests a release of federal obligations for properties acquired with Airport Improvement Program (AIP) funding. The Sponsor wishes to release and dispose of 84.08 acres of Airport property identified on the current "Exhibit A" property map as Tracts C1, C2 & C3. The Sponsor acquired tracts C1, C2, and C3 with grants through the Airport Improvement Program (AIP) 1991(3-37-0005-012-1991) and 1993 (3-37-0005-016-1993). This action is taken under the provisions of 49 U.S.C. 47107(h)(2).

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Asheville Regional Airport.

Issued in Memphis, Tennessee on February 3, 2026.

Rans D. Black,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2026-02316 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Port of Los Angeles for procurement of fully locked coil carbon steel cables and their respective components, galvanized cylindrical sockets, galvanized spherical nuts, and galvanized fatigue resistant

adjustable open spelter socket, with non-domestic iron and steel components for incorporation into the Port of Los Angeles-Rail Mainline/Wilmington Community & Waterfront Pedestrian Grade Separation Bridge Project.

DATES: The effective date of the waiver is February 7, 2026.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Robert Mooney, FHWA Office of Infrastructure, 202-897-7549, or via email at robert.mooney@dot.gov. For legal questions, please contact James Esselman, FHWA Office of the Chief Counsel, 202-366-6181, or via email at james.esselman@dot.gov. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: www.FederalRegister.gov and the U.S. Government Publishing Office's database at: www.GovInfo.gov.

Background

FHWA's Buy America requirements at 23 United States Code (U.S.C.) section 313 and 23 Code of Federal Regulations (CFR) section 635.410(b)(1) provide that all steel and iron materials permanently incorporated into a project must be domestically manufactured. Under 23 U.S.C. 313(b)(2), FHWA may waive the application of its Buy America requirement for steel and iron when products are not produced in the United States in sufficient and reasonably available quantities of a satisfactory quality. This notice provides information regarding FHWA's finding that it is appropriate to grant the Port of Los Angeles a non-availability waiver for non-domestic fully locked coil carbon steel cables and their respective components.

Background on the Project: In 2024, DOT selected the Port of Los Angeles to receive a \$5,000,000 competitive grant award under DOT's Fiscal Year 2023 Reconnecting Communities Pilot (RCP) Program for the Port's Rail Mainline/Wilmington Community & Waterfront Pedestrian Grade Separation Bridge Project ("Project"). The estimated total project cost is \$62,620,000. The Project will construct a pedestrian bridge over two mainline freight tracks in the Port of Los Angeles, which can also accommodate emergency vehicles and connects the nearby Wilmington community with the Wilmington

Waterfront. The waiver items are proposed to be incorporated into the Project.

Background on Waiver Request: The Port of Los Angeles submitted the Buy America waiver request on December 5, 2024, after completing a nationwide search for domestic Full Lock Coil Carbon Steel Cables that meet Buy America requirements and project specifications. The Port of Los Angeles contacted numerous domestic manufacturers of steel cables, and none reported the capability of producing the specified fully locked coil carbon steel cables and associated components. In addition, on December 4, 2024, in response to the Port of Los Angeles' supplier scouting request, as required by section 70916(c) of the Build America, Buy America Act (Pub. L. 117-58), the National Institute of Standards and Technology' Hollings Manufacturing Extension Partnership, reported that it had not identified a match for a domestic manufacturer of the required materials.

In response to the Port of Los Angeles request, on August 29, 2025, FHWA posted a notice on its website, <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=182>, seeking comment on whether the proposed waiver would be appropriate. FHWA received one comment in response to the waiver notice. The commenter did not offer any specific information on the domestic availability of compliant products, nor did the commenter suggest specifications the Port of Los Angeles could take to maximize its use of goods, products, and materials produced in the United States. Based on the Port of Los Angeles' research and the lack of domestic manufacturers identified during the waiver notice period, FHWA concludes there is good cause to find that a waiver of FHWA's Buy America requirements is appropriate for the products the Port of Los Angeles identified for the Project in its waiver request.

Timing and Need for a Waiver: The Port of Los Angeles explained that corrosion of steel components was identified as a significant concern due to the bridge location in a marine environment. Therefore, the use of extreme corrosion coating is necessary to minimize corrosion over the life of the structure. Fully locked cables were specified for the structure because the outer layer of the cable consists of Z-shaped wires that provide a consistently closed surface, which protects the core against corrosion over the design life of the cable.

Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes there are no Buy America-compliant versions of the waiver items and is therefore waiving its Buy America requirements set forth at 23 U.S.C. 313 and 23 CFR 635.410 for those items as incorporated in the Port of Los Angeles' Rail Mainline/Wilmington Community & Waterfront Pedestrian Grade Separation Bridge project. This waiver includes only the specified fully locked coil carbon steel cable and their respective attachments identified in the waiver request and supporting documents included on FHWA's website and is limited to purchases by the Port of Los Angeles, its contractors, or its subcontractors (of whatever tier) of the waiver items for the Rail Mainline/Wilmington Community & Waterfront Pedestrian Grade Separation Bridge Project. The waiver does not apply to purchases made for any other products or projects.

The Port of Los Angeles and its contractors and subcontractors involved in the procurement of the relevant fully locked coil carbon steel cable and their respective attachments are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. FHWA invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 118-42; 23 CFR 635.410.

Sean McMaster,
Administrator, Federal Highway
Administration.

[FR Doc. 2026-02332 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2026-0265]

Qualification of Drivers; Commercial Vehicle Safety Alliance; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA requests public comment on the Commercial Vehicle Safety Alliance's (CVSA) request for guidance, which FMCSA is treating as an application for exemption, to allow motor carriers and drivers to rely on a paper copy of the medical examiner's certificate (MEC) as proof of the driver's medical certification until the Medical Examiner's Certification Integration (NRII) final rule is fully implemented in all 50 States and the District of Columbia.

DATES: Comments must be received on or before March 9, 2026.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2026-0265 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2026-0265) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL-

14 FDMS (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Evangela Hollowell; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; fmcsamedical@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2026-0265), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2026-0265/document>, click on this notice, click "Comment," and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

B. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and

that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

C. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, insert FMCSA-2026-0265 in the keyword box, select the document tab and choose the document to review. To view comments, click this notice, then click "Browse Comments." If you do not have access to the internet, you may view the docket by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must

publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant's Request

Current Regulatory Requirements

FMCSA published the NRII final rule in 2015 (80 FR 22790, Apr. 23, 2015). The Agency extended the original compliance date several times, most recently on June 22, 2021 (86 FR 32643), with compliance ultimately being required as of June 23, 2025. The NRII rule modernizes how driver medical certification is shared, replacing the outdated paper-based process with a secure, electronic transmission system. The NRII rule mandates that certified medical examiners use specific forms to document physical qualification examinations and issue medical certificates to qualified commercial motor vehicle drivers. Among other changes that were implemented on June 23, 2025, medical examiners are no longer required to issue the original/paper MEC, Form MCSA-5876, to commercial learner's permit (CLP) applicants and commercial driver's license (CDL) holders. CLP applicants and CDL holders are no longer required to submit a paper MEC to their State Driver's Licensing Agency (SDLA) (49 CFR 391.43(g)(2)(ii)). Instead, FMCSA electronically transmits examination results and medical variance information for CLP applicants and CDL holders from the National Registry to the SDLAs. SDLAs post the driver's information on the Commercial Driver's License Information System (CDLIS) driver motor vehicle record (49 CFR 383.71(h)(1)(ii) and (h)(3)(ii); 49 CFR 383.73(a)(7)(ii) and (b)(5)(ii)).

In addition, the provisions allowing motor carriers and drivers to rely on paper copies of the MEC for up to 15 days after the certificate was issued expired as of June 22, 2025. 49 CFR 391.23(m)(2)(iii) and (m)(3)(i)(C); 49 CFR 391.41(a)(2)(i)(A) and (a)(2)(ii); 49 CFR 391.51(b)(6)(ii).

On July 14, 2025, FMCSA granted a waiver to interstate CDL and CLP holders and to motor carriers to allow them to continue to rely on a paper copy of the MEC as proof of the driver's medical certification for up to 15 days after the date the MEC was issued. On August 21, 2025, FMCSA modified the

waiver to allow CDL holders, CLP holders, and motor carriers to rely on the paper copy of the MEC as proof of the driver's medical certification for up to 60 days after the date the MEC was issued. FMCSA subsequently re-issued the waiver effective October 13, 2025, and January 11, 2026.

As of the date of this notice, 42 States and the District of Columbia have implemented NRII. Eight States have not yet implemented NRII and are continuing to rely on the paper MEC.

Applicant's Request

CVSA requests that FMCSA provide guidance to commercial motor vehicle enforcement officials that drivers are permitted to carry paper copies of their valid MEC with them to demonstrate compliance with the applicable requirements. CVSA notes that motor carriers have faced challenges in uneven NRII implementation from State to State. CVSA notes that these challenges have resulted in additional costs and administrative burdens to motor carriers.

Although CVSA's request is labeled as a request for guidance, FMCSA has determined that it is unable to issue the guidance CVSA is seeking because it would conflict with the regulations currently in effect, which are binding on regulated entities. Therefore, FMCSA is treating CVSA's request for guidance as an application for exemption from the applicable regulations to allow motor carriers and drivers to continue to rely on a paper copy of the driver's MEC as proof of the driver's medical certification for 60 days from the date the certificate was issued. If granted, this exemption would allow motor carriers and drivers the same flexibility as the current waiver while waiting for all States to complete NRII implementation. This exemption would exempt motor carriers and drivers from the end date of June 22, 2025, and the 15-day time period in 49 CFR 391.23(m)(2)(iii) and (m)(3)(i)(C), 49 CFR 391.41(a)(2)(i)(A) and (a)(2)(ii), and 49 CFR 391.51(b)(6)(ii) and would be valid for one year.

Equivalent Level of Safety

When FMCSA issued the waivers to allow drivers and motor carriers to continue to rely on a paper copy of the MEC as proof of the driver's medical certification for up to 60 days after the date the MEC was issued, FMCSA determined that the waivers were likely to achieve a level of safety that is equivalent to the level of safety that would be obtained absent the waiver because the waivers did not alter the requirement that a person may not

operate a commercial motor vehicle unless he or she is certified by a medical examiner as physically qualified to do so and did not alter any physical qualification requirements for drivers.

A copy of CVSA's request is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on CVSA's application for an exemption. In addition, FMCSA requests public comment on the appropriate timeframe for motor carriers and drivers to rely on a paper copy of the MEC, noting that the waiver allows a 60-day grace period. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2026-02369 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0317]

Hours of Service of Drivers: Colorado Huntsman Transport, Inc; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny a request from Colorado Huntsman Transport, Inc. d.b.a. Huntsman Transport, USDOT 4050798 ("Huntsman Transport"), for an exemption from the commercial motor vehicle (CMV) marking requirements and provisions of the hours-of-service (HOS) regulations. FMCSA analyzed the exemption application and public comment and has determined that the exemption

would not likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202-366-2551 or *Bernadette.walker@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0317/document> and choose the document to review. To view comments, click this notice, then click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews applications, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provisions from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49

CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 390.21, CMVs must be marked with the legal name or single trade name and USDOT number of the motor carrier. Under 49 CFR 395.5(b), drivers of passenger-carrying CMVs may not drive after having been on duty 60 hours in any 7 consecutive days if the motor carrier does not operate CMVs every day of the week or after having been on duty 70 hours in any period of 8 consecutive days if the employing motor carrier operates CMVs every day of the week.

Applicant's Request

Colorado Huntsman Transport's application for exemption was described in detail in a **Federal Register** notice on March 28, 2025, (90 FR 14179) and will not be repeated as the facts have not changed.

IV. Public Comments

AWM Associates, LLC. (AWM) filed the only comment on this exemption request. AWM opposed granting the exemption and stated, "The FMCSA should deny the carrier's application; whereas the carrier's competition has a similar service and has not asked for an exception. Allowing the carrier an exception opens a flood gate for other similar operations to apply for exemptions."

V. FMCSA Decision

FMCSA evaluated Huntsman Transport's application and the public comment and denies the exemption request. Huntsman Transport failed to establish that it would likely achieve a level of safety equivalent to, or greater than, the level achieved without the exemption.

The CMV marking requirements exist to ensure that State officials who conduct roadside vehicle inspections and crash investigations attribute safety data to the correct motor carrier. They also provide the public with a means to identify motor carriers operating in an unsafe manner. Huntsman Transport did not explain how operating unmarked CMVs would reduce the alleged security threat posed by encounters between transported prisoners and individuals they may know during stops at other correctional facilities and did not explain how it would achieve an equivalent level of safety. As noted by the commenter, other prisoner transport contractors comply with the CMV marking requirements, and Huntsman Transport

could use a smaller van if it wanted to complete a trip in an unmarked vehicle.

Huntsman Transport requested that it be permitted to extend the 60-hour/7-day on-duty period to an 80-hour/7-day on-duty period (from Sunday to Saturday), resetting every Sunday at 0000 hours. To ensure an equivalent level of safety, the applicant proposes a team driver operation for trips that last longer than two days. The team driver operation consists of the Huntsman agents alternating every three to five hours between driving and resting in the passenger seat, as the CMV will not be equipped with a sleeper berth. FMCSA does not believe a driver resting in the passenger seat of a CMV for more than three hours allows for adequate rest for operating a CMV.

The HOS regulations exclude from the definition of “on-duty time” all time spent resting in a parked CMV, time spent resting in a sleeper berth, and up to three hours in the passenger seat of a moving CMV immediately before or after at least seven consecutive hours in the sleeper berth. FMCSA has determined that resting in a parked CMV and resting in a sleeper berth provide adequate alternatives to lodging. In contrast, Huntsman’s request would allow team drivers to alternate every three to five hours between driving and resting in the passenger seat of a moving CMV rather than resting in a parked CMV. In its 2020 Hours-of-Service final rule FMCSA noted that drivers get a lower quality of sleep in a moving vehicle (85 FR 33396, 33424). FMCSA determined that based on studies and sleep science, drivers need at least one primary sleep period of 7 consecutive hours when using the sleeper berth provision to rest in a moving CMV.

The applicant proposes working a maximum of 80 hours within a 7-day period from Sunday to Saturday with an allowance to reset on Sunday at 0000 hours and driving limited to 8 hours per day. The proposed 80-hour-per-week alternative does not offer a level of safety equivalent to FMCSA’s HOS regulations which permits 60 hours in any 7-day period and 70 hours in any 8-day period. It permits dangerously long work hours without proper rest or oversight, increases risk of fatigue-related crashes, and conflicts with science-based safety standards.

The applicant also proposes a policy that restricts its agents’ driving responsibilities to no more than three weeks in any four-week month or four weeks in any five-week month to guarantee that both drivers have enough time to rest. FMCSA believes the applicant’s proposed policy is

insufficient because the extended time off does not mitigate daily or weekly fatigue.

For the above reasons, Huntman Transport’s exemption application is denied.

Derek D. Barrs,
Administrator.

[FR Doc. 2026–02367 Filed 2–5–26; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2025–0128]

Application for Employment: CloudTrucks, LLC., Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny CloudTrucks, LLC’s (CloudTrucks) request for an exemption from the requirement to collect the following information from prospective drivers: list of employers’ names, addresses, and dates of employment, reason for leaving, whether the driver was subject to the Federal Motor Carrier Safety Regulations (FMCSRs) while employed by the previous employer, and if the driver was subject to the alcohol and controlled substances testing requirements. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption is not likely to achieve a level of safety that is equivalent to, or greater than, the level that would be achieved in the absence of the exemption.

DATES: The decision is effective February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; 202–507–0363; Bernadette.walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/>

FMCSA–2025–0128 document and choose the document to review. To view comments, click this notice, then click “Browse Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from the FMCSRs. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant’s safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews applications, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption, pursuant to the standard set forth in 49 U.S.C. 31315(b)(1). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

Under 49 CFR 391.21(b)(10)(i)–(iv), prospective driver employees (meaning applicants for employment) are required to provide prospective motor carrier employers with the following information: name and address of the driver’s employers during the 3 years preceding the date of the application, dates of employment, reason for leaving, and for any driver employed after October 29, 2004, confirmation whether the driver candidate held a position that was subject to the FMCSRs or designated as safety sensitive by any DOT mode subject to controlled substance and alcohol testing.

In addition, Congress required in 49 U.S.C. 31303(c) that an applicant applying for a position to operate a CMV that requires a commercial driver's license must provide the driver's employment history for the preceding 10 years, rather than 3 years (49 CFR 391.21(b)(11)). In contrast, the motor carrier is required to investigate the driver's safety performance history for only the preceding 3 years (49 CFR 391.23(a)(2)).

Applicant's Request

CloudTrucks's application for exemption was described in detail in a **Federal Register** notice published on July 1, 2025 (90 FR 28856) and will not be repeated as the facts have not changed.

IV. Public Comments

The Agency received five unique comments:¹ one in support, three in opposition, and one taking no position either for or against the exemption. CloudTrucks also submitted a response to an opposing comment. James Wiseman supported the exemption request and stated, "I believe this request reflects a thoughtful and responsible effort to modernize the application and onboarding process for commercial drivers through the use of advanced technology."

Among the commenters in opposition, one anonymous commenter said, "I would think it would be a better option that all carriers need to report to one national data base not another pay for service that does not link all CDL verification services to one." Steve Sutherlandgray stated that FMCSA should deny the exemption for multiple reasons, including concerns about mandatory, non-negotiable terms in the lease agreement between CloudTrucks and its owner-operators. He said, "The exemption, if granted, would reward a business structure that obfuscates regulatory liability and imposes hidden obligations on drivers." Another anonymous commenter expressed concern with alleged tax, labor, consumer protection, and other violations. The anonymous commenter also stated that the Clearinghouse, PSP, and CDLIS do not contain employment history information.

AWM Associates, LLC (AWM) and an anonymous commenter cited concerns with CloudTrucks's safety data, including driver fitness violations.

AWM stated that the databases CloudTrucks intends to use are not an adequate substitute for the requirements in the FMCSRs. In response to AWM's comment, CloudTrucks stated that its vehicle and driver out-of-service rates are comparable to those of other carriers of similar size. CloudTrucks wrote, "We respectfully request that FMCSA evaluate our exemption on its own merits, including our compliance architecture, safety protocols, and ability to meet the goals of [49 CFR] 391.23 through alternative, verifiable means."

V. FMCSA Decision

FMCSA has evaluated CloudTrucks's application and the public comments, as well as CloudTrucks's safety performance record, and denies the exemption request. As noted by commenters, CloudTrucks's on-road safety data, including driver fitness violations, indicate ongoing safety management concerns. CloudTrucks met the criteria for FMCSA's "High Risk" definition (81 FR 11875) as recently as March 2025. CloudTrucks was cited for 27 driver fitness violations in the past two years during inspections, 20 of which were out-of-service violations. Given CloudTrucks's safety performance record and recent designation as "high risk," FMCSA does not find that the requested exemption will likely achieve a level of safety equivalent to, or greater than, the level achieved by complying with the regulations.

For the above reasons, the CloudTrucks, LLC exemption application is denied.

Derek Barrs,
Administrator.

[FR Doc. 2026-02368 Filed 2-5-26; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

United States Mint

Meeting

ACTION: Notice of meeting.

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for February 24, 2026.

Date: February 24, 2026.

Time: 11:00 a.m.–4:00 p.m. (Eastern Time).

Location: Remote via Videoconference.

Subject: Review and discussion of the obverse and reverse design portfolios for the 2027 Working Dogs Commemorative Coin Program; review and discussion of the obverse and reverse for the Billie Jean King Congressional Gold Medal; and review and discussion of the reverse design portfolios for the 2027 American Youth Sports quarters and Paralympic half dollar.

Interested members of the public may watch the meeting via live stream on the United States Mint's YouTube Channel at <https://www.youtube.com/user/usmint>. To watch the meeting live, members of the public may click on the "February 24, 2026" icons under the Live Tab on the specific day.

The public should call the CCAC HOTLINE at (202) 354-7502 for the latest updates on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in watching on-line, this is a reminder that the remote access is for observation purposes only. Members of the public may submit matters for the CCAC's consideration by email to info@ccac.gov.

FOR ACCOMMODATION REQUEST: If you require an accommodation to watch the CCAC meeting, please contact the Office of Equal Employment Opportunity by February 17, 2026. You may submit an email request to Reasonable.Accommodations@usmint.treas.gov or call 202-354-7260 or 1-888-646-8369 (TTY).

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202-354-7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,
Executive Secretary, United States Mint.
[FR Doc. 2026-02310 Filed 2-5-26; 8:45 am]

BILLING CODE 4810-37-P

¹ The docket shows that six comments were filed during the comment period, however, two of the anonymous comments are duplicates with matching attachments. The duplicate entries can be found at docket comment ID number FMCSA-2025-0128-0005 and FMCSA-2025-0128-0006.

DEPARTMENT OF THE TREASURY

ACTION: Notice.

United States Mint

Establish New and Updated Prices for United States Mint Numismatic Products

AGENCY: United States Mint, Department of the Treasury.

SUMMARY: The United States Mint is announcing new and updated pricing for its numismatic products in accordance with the table below, effective January 20, 2026:

Product	New retail price
2018 American Innovation \$1 Proof Coin	\$40.00
American Innovation \$1 Reverse Proof Coin	40.00
American Innovation \$1 25-Coin Roll (P or D)	61.00
American Innovation \$1 100-COIN BAG	154.50
American Innovation \$1 Proof Set	60.00
American Innovation \$1 Reverse Proof Set	60.00
AWQ QTR 100-Coin Bag (P or D)	63.00
AWQ QTR 3-Roll Set (P, D, & S)	84.00
AWQ QTR Proof Set	44.00
AWQ QTR Silver Proof Set	130.00
Native American \$1 25-Coin Roll (P or D)	61.00
Native American \$1 250-Coin Box (P or D)	380.00
Native American \$1 100-Coin Bag (P or D)	154.50
Kennedy Half-Dollar 200 Coin Bag (P&D)	180.00
Kennedy Half-Dollar 2-Roll Set (P&D)	60.00
American Eagle 1 oz Silver Proof Coin (W, S)	173.00
American Eagle 1 oz Silver Uncirculated Coin (W)	169.00
American Liberty Silver Medal™	170.00
United States Mint Proof Set®	107.00
United States Mint Silver Proof Set®	245.00
United States Mint Congratulations Set	175.00
Uncirculated Set	124.50
American Women Quarters Silver Proof Set™	130.00
Morgan Dollar—Silver Proof	173.00
Morgan Dollar—Silver Uncirculated	169.00
Peace Dollar—Silver Proof	173.00
Peace Dollar—Silver Uncirculated	169.00
Morgan and Peace Two-Coin Silver Reverse Proof Set	375.00
Limited Edition Silver Proof Set	400.00
Armed Forces 1 oz Silver Medal (all skus)	164.00
1 oz Presidential Silver Medal (all skus)	164.00
Comic Art 1 Ounce Silver Medal	200.00
Comic Art 2.5 Ounce Silver Medal	400.00

FOR FURTHER INFORMATION CONTACT: Kai Washington, Product Manager; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 1-202-354-7662.

(Authority: 31 U.S.C. 5111, 5112, 5132, 9701.)

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2026-02405 Filed 2-5-26; 8:45 am]

BILLING CODE 4810-37-P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Notice and request for public comment and hearing.

SUMMARY: The United States Sentencing Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that proposed amendment. This notice also sets forth several issues for comment, some of which are set forth together with the proposed amendments, and one of which (regarding retroactive application of proposed amendments) is set forth in the Supplementary Information section of this notice.

DATES: *Written Public Comment.* Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be

received by the Commission not later than March 18, 2026. Public comment regarding a proposed amendment received after the close of the comment period may not be considered.

Public Hearing. The Commission may hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice. Further information regarding any public hearing that may be scheduled, including requirements for testifying and providing written testimony, as well as the date, time, location, and scope of the hearing, will be provided by the Commission on its website at www.ussc.gov.

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at <https://comment.ussc.gov>. Follow the

online instructions for submitting comments.

Submission of Comments by Mail.

Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs—Proposed Amendments.

FOR FURTHER INFORMATION CONTACT:

Jennifer Dukes, Senior Public Affairs Specialist, (202) 502–4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

Publication of a proposed amendment requires the affirmative vote of at least three voting members of the Commission and is deemed to be a request for public comment on the proposed amendment. *See* USSC Rules of Practice and Procedure 2.2, 4.4. In contrast, the affirmative vote of at least four voting members is required to promulgate an amendment and submit it to Congress. *See id.* 2.2; 28 U.S.C. 994(p).

The Commission published a notice of proposed amendments in the **Federal Register** on December 19, 2025 (*see* 90 FR 59660). Those proposed amendments have a public comment period ending on February 10, 2026. The Commission is now considering promulgating additional amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth those proposed amendments.

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline, policy statement, or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense

characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

In summary, the proposed amendments and issues for comment set forth in this notice are as follows:

(1) A two-part proposed amendment relating to sentencing options, including (A) (i) amendments to Chapter Five, Part A (Sentencing Table) to add a new Introductory Commentary highlighting the broad range of sentencing options that are statutorily provided and the recognition that different sentencing factors may weigh differently in different cases, and a new guideline at § 5A1.1 (Determination of Type of Sentence) providing an overview of the steps necessary for the court to determine an appropriate sentence pursuant to Chapter Five; and (ii) related issues for comment; and (B) amendments to Chapter Five to expand Zones B and C of the Sentencing Table, and related issues for comment.

(2) A proposed amendment relating to the career offender guidelines, including (A) options for amending § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to address recurrent criticism of the categorical approach and modified categorical approach in the context of the “crime of violence” definition; (B) options for amending § 4B1.2 to limit the scope of the “controlled substance offense” definition; (C) options for amending the Commentary to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to address the references to the definitions of “crime of violence” and “controlled substance offense” found in § 4B1.2; and (D) related issues for comment.

(3) A proposed amendment relating to two circuit conflicts involving the definition of “controlled substance offense” in subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1), including (A) options for amending § 4B1.2 and the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States) to address both circuit conflicts; and (B) related issues for comment.

(4) A proposed amendment to § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) in response to concerns that the guideline does not appropriately account for the consideration of factors such as the number of humans smuggled and whether the offense involved bodily

injury or sexual assault, and related issues for comment.

In addition, the Commission requests public comment regarding whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any proposed amendment published in this notice should be included in subsection (d) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. The Commission lists in § 1B1.10(d) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The Background Commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(d). To the extent practicable, public comment should address each of these factors.

The text of the proposed amendments and related issues for comment are set forth below. Additional information pertaining to the proposed amendments and issues for comment described in this notice may be accessed through the Commission's website at www.ussc.gov. In addition, as required by 5 U.S.C. 553(b)(4), plain-language summaries of the proposed amendments are available at <https://www.ussc.gov/guidelines/amendments/proposed-2026-amendments-federal-sentencing-guidelines-published-january-2026>.

(Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 2.2, 4.3, 4.4.)

Carlton W. Reeves,
Chair.

Proposed Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary

1. Sentencing Options

Synopsis of Proposed Amendment: In August 2025, the Commission identified as one of its policy priorities for the amendment cycle ending May 1, 2026, “[e]xamination of how the guidelines can provide courts with additional guidance on selecting the appropriate sentencing option (e.g., imprisonment, probation, or fine), and possible consideration of amendments that might be appropriate.” U.S. Sent’g Comm’n, “Notice of Final Priorities,” 90 FR 39263 (Aug. 14, 2025). As part of this examination, the Commission held a

Sentencing Options Roundtable in December 2025, which was attended by a wide range of stakeholders. Participants expressed varying views on how the Commission should proceed with the sentencing options priority, ranging from no or very limited action to fundamental restructuring of the sentence type determination.

The proposed amendment is informed by feedback received from stakeholders. It contains two parts (Parts A and B). The Commission is considering whether to promulgate either or both of these parts, as they are not mutually exclusive. The proposed amendment would retain the *Guideline Manual's* zone-based structure, which provides for flexibility in the sentencing options available for defendants whose guideline ranges fall within Zones A through C of the Sentencing Table. Part A of the proposed amendment would provide further guidance on determining the appropriate sentence type from among those authorized by the guidelines and emphasize the importance of this threshold determination. Part B of the proposed amendment would expand Zones B and C to increase the availability of sentencing options for certain defendants.

In General

Chapter Five (Determining the Sentencing Range and Options Under the Guidelines) of the *Guidelines Manual* sets forth the steps used to determine the applicable sentencing range and sentencing options based upon the guideline calculations made in Chapters Two through Four. It also sets forth “zones” in the Sentencing Table that authorize different sentencing options. The chapter is divided into several parts that set forth the sentencing requirements and options under the guidelines related to probation, imprisonment, supervision conditions, fines, and restitution for the particular guideline range.

Part A (Sentencing Table) sets forth the Sentencing Table that is used to determine the applicable guideline range based on the intersection of the offense level (determined pursuant to Chapters Two and Three) and the criminal history category (determined pursuant to Chapter Four) applicable to the defendant. The Sentencing Table sorts all sentencing ranges into four zones, labeled Zones A through D.

Part B (Probation) addresses probation, including the imposition decision itself, the length of a term of probation, and the conditions of probation.

Part C (Imprisonment) sets forth the provisions relating to how the minimum and maximum terms of the applicable guideline range may be satisfied according to the pertinent zone of the Sentencing Table.

Part D (Supervised Release) addresses supervised release, including the imposition decision itself, the length of a term of supervised release, and the conditions of supervised release.

Part E (Restitution, Fines, Assessments, Forfeitures) addresses the determination of whether to impose restitution, fines, forfeiture, and assessments.

Part F (Sentencing Options) sets forth additional conditions that the court may impose as part of the sentence.

The zones of the Sentencing Table generally provide the sentencing options that the courts consider in determining the appropriate sentence. The zones are allocated in the Sentencing Table in Part A of Chapter Five. However, the sentencing options that these zones authorize are set out in provisions distributed throughout several parts of Chapter Five. In general, each zone authorizes different sentencing options, as follows:

Zone A.—All sentencing ranges within Zone A, regardless of the underlying offense level or criminal history category, are zero to six months. Zone A authorizes a sentence that is probation-only, probation with a confinement condition (home detention, community confinement, or intermittent confinement), a split sentence (term of imprisonment with term of supervised release with condition of confinement), or imprisonment. Zone A is the only zone that authorizes probation without any conditions of confinement.

Zone B.—Sentencing ranges in Zone B are from 1–7 to 9–15 months of imprisonment. Zone B authorizes a probation term to be substituted for imprisonment, contingent upon the probation term including conditions of confinement sufficient to satisfy the minimum term specified in the guideline range. Zone B also authorizes a term of imprisonment (of at least one month) followed by a term of supervised release with a condition of confinement (*i.e.*, a “split sentence”) or a term of imprisonment only.

Zone C.—Sentencing ranges in Zone C are 10–16 or 12–18 months of imprisonment. Zone C authorizes a “split sentence,” which must include a term of imprisonment equivalent to at least half of the minimum of the applicable guideline range. The remaining half of the term requires supervised release with a condition of community confinement or home

detention. Alternatively, the court has the option of imposing a term of imprisonment only.

Zone D.—Zone D authorizes imprisonment only, with sentencing ranges ranging from 15–21 months to life imprisonment.

Part A (Changes to Part A of Chapter Five)

Part A of the proposed amendment would generally amend Part A of Chapter Five to make two changes, either one or both of which could be promulgated. First, Part A of the proposed amendment would add new Introductory Commentary to Part A of Chapter Five. Second, it would add a new guideline at § 5A1.1 (Determination of Type of Sentence) and, as a result, would designate the Sentencing Table as § 5A1.2 and make technical changes to the existing Introductory Commentary to Chapter Five. The Commission is considering a range of alternatives: only promulgating the new introductory commentary to Part A set forth below; only promulgating the new guideline at § 5A1.1 set forth below; promulgating both the new introductory commentary and new § 5A1.1 set forth below; or only promulgating a version of new introductory commentary to Part A that also incorporates some of the text that now appears within new § 5A1.1 set forth below.

The proposed Introductory Commentary to Part A of Chapter Five draws from the legislative history of the Sentencing Reform Act, highlighting the broad range of sentencing options that are statutorily provided and the recognition that different sentencing factors may weigh differently in different cases. It emphasizes that a sentence of probation serves a punitive function, citing to the legislative history of the Sentencing Reform Act and certain Supreme Court jurisprudence.

The proposed guideline at § 5A1.1 would provide an overview of the steps necessary for the court to determine an appropriate sentence pursuant to Chapter Five. New § 5A1.1 would contain the following four subsections.

Subsection (a) instructs the court to determine the sentencing options that are *available* under the guidelines by determining the guideline range and zone of the Sentencing Table applicable to the defendant. Paragraphs (1) through (4) summarize the authorized sentencing options in each of Zone A through D with cross-references to the relevant provisions of Chapter Five. Application Note 1 restates the rule currently set forth in the Commentary to § 5E1.2 (Fines for Individual Defendants) that “[a] fine may be the

sole sanction if the guidelines do not require a term of imprisonment.” USSG § 5E1.2, comment. (n.1).

Subsection (b) instructs the court to determine the *appropriate* sentencing options from among those authorized in the guidelines.

Subsection (c) directs the court to the relevant provisions of Chapter Five according to the type of sentence it intends to impose for further guidance on determining the length, conditions, and other aspects of the sentence. More specifically, it directs the court to Part B (Probation) for sentences of probation, Parts C (Imprisonment) and D (Supervised Release) for sentences of imprisonment, Part E (Restitution, Fines, Assessments, Forfeitures) in all cases, Part F (Sentencing Options) in certain cases, and Part G (Implementing the Total Sentence of Imprisonment) if applicable.

Subsection (d) recognizes the court’s authority and duty under 18 U.S.C. 3553, which permits the court to impose any statutorily authorized sentence [even if that same sentence is not authorized by the guidelines].

Issues for comment are also provided.

Part B (Expansion of Zones B and C of the Sentencing Table)

Part B of the proposed amendment would expand Zones B and C of the Sentencing Table. The expanded Zone B would authorize the sentencing options described above for sentencing ranges from four to 57 months for Criminal History Category I and sentencing ranges from one to 18 months for the other criminal history categories. The expanded Zone C would authorize the sentencing options described above for sentencing ranges from 51 to 108 months for Criminal History Category I, sentencing ranges from 15 to 24 months for Criminal History Categories II through IV, and sentencing ranges from 15 to 21 months for Criminal History Categories V and VI.

Finally, Part B makes conforming changes to §§ 5B1.1 (Imposition of a Term of Probation) and 5C1.1 (Imposition of a Term of Imprisonment).

Issues for comment are also provided.

(A) Changes to Part A of Chapter Five

Proposed Amendment:

Chapter Five is amended in the Introductory Commentary by striking “Chapter Five sets forth the steps used to determine the applicable sentencing range based upon the guideline calculations made in Chapters Two through Four. Additionally, the provisions” and inserting “Chapter Five sets forth the steps used to determine the applicable sentencing range and

sentencing options based upon the guideline calculations made in Chapters Two through Four. The provisions”.

Chapter Five, Part A is amended—in the heading by striking “Sentencing Table” and inserting “Determination of Type of Sentence and Sentencing Range”;

by inserting at the beginning the following new Introductory Commentary:

“Introductory Commentary

Congress charged the Commission with promulgating guidelines for sentencing courts to use in determining ‘whether to impose a sentence to probation, a fine, or a term of imprisonment’ (see 28 U.S.C. 994(a)(1)(A)), which ‘may be one of the most important parts of the guidelines process.’ See S. Rep. No. 225, 98th Cong., 1st Sess. 163–64 (1983). The provisions within Chapter Five, in combination, guide all aspects of determining the appropriate sentence under the guidelines, including the initial determination of sentence type. The Commission, however, adopted [Part A of this chapter][this introductory commentary] to further underscore the importance of this critical decision.

[In promulgating the guidelines in this part, the][The] Commission is mindful that Congress decided against establishing a presumption in favor of any particular sentence type, wary that ‘[a] congressional statement of a preferred type of sentence might serve only to undermine the flexibility that the criminal justice system requires in order to determine the appropriate sentence in a particular case in light of increased knowledge of human behavior.’ *Id.* at 92. The Commission likewise recognizes, as Congress did when it enacted the Sentencing Reform Act of 1984, ‘that one [sentencing] purpose may have more bearing on the imposition of sentence in a particular case than another purpose has.’ *Id.* at 68. For example, ‘the purpose of rehabilitation may play an important role in sentencing an offender to a term of probation with the condition that he participate in a particular course of study, while the purposes of just punishment and incapacitation may be important considerations in sentencing a repeated or violent offender to a relatively long term of imprisonment.’ *Id.* At the same time, non-imprisonment sentences undoubtedly serve a punitive function and in many cases would adequately serve the purposes of sentencing when appropriate conditions are imposed. See, e.g., *id.* at 91 (‘It may very often be that release on probation under conditions designed to fit the

particular situation will adequately satisfy any appropriate deterrent or punitive purpose.’); *Gall v. United States*, 552 U.S. 38, 48 (2007) (recognizing that though ‘custodial sentences are qualitatively more severe than probationary sentences of equivalent terms[,]’ individuals ‘on probation are nonetheless subject to several standard conditions that substantially restrict their liberty’); *Esteras v. United States*, 606 U.S. 185, 196 (2025) (juxtaposing the purposes of probation and supervised release, explaining that ‘[f]ines, probation, and imprisonment are a court’s primary tools for ensuring that a criminal defendant receives just deserts for the original offense’). Congress recognized the important role of non-imprisonment sentences when it established probation as a sentence in itself as part of the Sentencing Reform Act. [As the criminal justice system continues to develop more advanced tools to assess and respond to individual defendants’ unique risks and needs, the court should consider the resources available to address the defendant’s needs, and the setting in which those resources can be provided, in determining the appropriate sentencing option.] The Commission intends for [§ 5A1.1 (Determination of Type of Sentence)][Chapter Five] to support the court’s ‘full exercise of informed discretion in tailoring sentences to the circumstances of individual cases.’ S. Rep. No. 225, 98th Cong., 1st Sess. 91 (1983).”;

in the Sentencing Table, by redesignating the Sentencing Table as § 5A1.2 and inserting the following new heading “§ 5A1.2. *Sentencing Table*”; and by inserting before § 5A1.2 (as so redesignated) the following new § 5A1.1:

“§ 5A1.1. Determination of Type of Sentence

(a) *Determining the Available Sentencing Options.*—Determine the guideline range and zone applicable to the defendant’s offense level and criminal history category in accordance with the Sentencing Table set forth in § 5A1.2 (Sentencing Table). The Sentencing Table is divided into zones (Zones A, B, C, and D), with each providing different sentencing options. Subject to any statutory limitations in an individual case (see, e.g., § 5B1.1(b) (statutory eligibility for probation), §§ 5G1.1, 5G1.2 (statutory minima and maxima)), the sentencing options are generally as follows:

(1) Zone A authorizes a sentence of probation with or without any conditions of confinement, in addition

to the sentencing options authorized in Zones B through D. *See* §§ 5B1.1(a)(1), 5C1.1(a)–(b) 5C1.1, comment. (n.2).

(2) Zone B authorizes a sentence of probation, provided that the minimum term of imprisonment specified in the guideline range is satisfied by a period of intermittent confinement, community confinement, or home detention, as provided by the schedule of substitute punishments at § 5C1.1(e). In addition, Zone B provides for the sentencing options authorized in Zones C and D. *See* §§ 5B1.1(a)(2), 5C1.1(c), 5C1.1, comment. (n.3).

(3) Zone C authorizes a ‘split sentence’ of imprisonment, in which at least one-half of the minimum term specified in the guideline range is satisfied by a period of imprisonment and the remainder is satisfied by a term of supervised release with a condition substituting community confinement or home detention according to the schedule of substitute punishments provided at § 5C1.1(e). In addition, Zone C provides for the sentencing options authorized in Zone D. *See* § 5C1.1(d); *id.*, comment. (n.4).

(4) Zone D authorizes sentences of imprisonment only. *See* § 5C1.1(f).

(b) *Determining the Appropriate Sentencing Option.*—In determining the appropriate sentencing option(s) from among those authorized under the guidelines, courts should consider which option(s) will best meet the purposes of sentencing and the needs of the individual defendant.

(c) *Determining the Sentence Under the Guidelines.*—Determine the length, conditions, and other aspects of the sentence by applying the provisions in this chapter.

(1) If the court determines that a term of probation is appropriate, proceed to Part B (Probation) of this chapter to determine the length and conditions of any term of probation. Certain conditions of probation are addressed in further detail in Part F (Sentencing Options) of this chapter.

(2) If the court determines that a term of imprisonment is appropriate, proceed to Parts C (Imprisonment) and D (Supervised Release) of this chapter to determine the length of the term of imprisonment, whether to impose a term of supervised release, and, if a term of supervised release is imposed, the length and conditions of that term. Certain conditions of supervised release are specifically addressed in further detail in Part F (Sentencing Options) of this chapter.

(3) In all cases, proceed to Part E (Restitution, Fines, Assessments, Forfeitures) to determine whether to

impose restitution, fines, forfeiture, or a special assessment.

(4) If applicable, proceed to Part G (Implementing the Total Sentence of Imprisonment) to determine how to implement a sentence in a case involving multiple counts of conviction, an undischarged term of imprisonment, or an anticipated state term of imprisonment.

(d) *Consideration of Factors Set Forth in 18 U.S.C. 3553(a).*—The court shall consider the applicable factors in 18 U.S.C. 3553(a) to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. [The court may determine that a sentencing option that is authorized by statute, but not by the guidelines, is appropriate based on the consideration of these sentencing factors.]

Commentary

Application Note:

1. *Fine-Only Sentence.*—A fine may be the sole sanction if the guidelines do not require a term of imprisonment. *See* § 5E1.2, comment. (n.1).’.

Issues for Comment:

1. Part A of the proposed amendment would amend Part A of Chapter Five to both add new introductory commentary to Part A and a new guideline at § 5A1.1 (Determination of Type of Sentence). The Commission seeks comment on whether it should adopt both the new introductory commentary and the new guideline, only the new introductory commentary, or only the new § 5A1.1 guideline. If the Commission were to promulgate only the new introductory commentary to Part A, should it incorporate into the commentary any of the guidance currently provided in proposed § 5A1.1?

2. Part A of the proposed amendment would add to Part A of Chapter Five a new guideline at § 5A1.1 (Determination of Type of Sentence). The new guideline at § 5A1.1 would provide an overview of the steps necessary for the court to determine an appropriate sentence pursuant to Chapter Five. New Subsection (b) instructs the court to determine the appropriate sentencing options from among those authorized in the guidelines. The Commission seeks comment on whether it should list factors in new § 5A1.1(b) for courts to consider in determining the appropriate sentencing option under the guidelines. If so, what factors should be listed? The Commission seeks comment on whether the list of factors should include any of the factors listed below:

- Whether a sentence of probation or a term of imprisonment best protects the public and meets the other purposes of

sentencing. *See* 18 U.S.C. 3553(a)(1), (a)(2); § 5C1.1(e) (schedule of substitute punishments).

- Whether the seriousness of the defendant’s offense, and the nature and degree of harm caused by it, requires a term of imprisonment to provide just punishment, afford adequate deterrence to criminal conduct, promote respect for the law, or adequately address public concern generated by the offense. *See* 18 U.S.C. 3553(a)(2); 28 U.S.C. 994(c).

- Whether the defendant is in need of educational or vocational training, medical care, or other rehabilitative or correctional treatment, and the setting in which any such treatment would be most effectively provided. *See* 18 U.S.C. 3553(a)(2)(D), 3582(a); 28 U.S.C. 994(k).

- The nature and capacity of the penal, correctional, and other facilities and services available, the relative cost associated with available sentencing options, and how resources could be most effectively allocated to address the risks and needs of the defendant. 28 U.S.C. 994(g), (k).

- Whether the defendant is: (1) a “first offender” who has not been convicted of a crime of violence or an otherwise serious offense, for whom a sentence other than imprisonment is generally appropriate; or (2) a person convicted of a crime of violence that results in serious bodily injury, for whom a sentence of imprisonment is generally appropriate. *See* 28 U.S.C. 994(j).

- Whether the defendant has a history of prior criminal conduct that warrants a substantial term of imprisonment. *See* 28 U.S.C. 994(h), (i).

- Any developing research and knowledge about the effectiveness of available sentencing options in meeting the needs of individual defendants, reducing recidivism, and protecting the public. *See* 28 U.S.C. 991(b)(1)(C).

Should the Commission provide additional or different factors?

3. Section 3553(a) of Title 18 lists some of the factors that the court shall consider to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. In particular, the factors set forth in section 3553(a)(2) include “the need for the sentence imposed . . . (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” The Commission

seeks comment on whether proposed new § 5A1.1(b) should reference the factors listed in 18 U.S.C. 3553(a), including the purposes of sentencing in section 3553(a)(2)? If so, how? Would referencing or incorporating these statutory factors into the proposed guideline inadvertently create a procedural requirement that could be subject to litigation?

(B) Expansion of Zones B and C of the Sentencing Table

Proposed Amendment:

Chapter Five, Part A is amended in the Sentencing Table—

by redesignating Zone B to contain all guideline ranges having a minimum of at least four months but not more than 46 months in criminal history category I and a minimum of at least one month but not more than 12 months in criminal history categories II through VI;

by redesignating Zone C to contain all guideline ranges having a minimum of 51 months but not more than 87 months in criminal history category I, a minimum of 15 months but not more than 18 months in criminal history categories II through IV, and a minimum of 15 months in criminal history categories V and VI;

and by redesignating Zone D to contain all guideline ranges having a minimum of 97 months or more in criminal history category I, a minimum of 21 months or more in criminal history categories II through IV, and a minimum of 18 months or more in criminal history categories V and VI.

The Commentary to § 5B1.1 captioned “Application Notes” is amended—

in Note 1(B) by striking “(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least one but not more than nine months)” and inserting “(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least four months but not more than 46 months in criminal history category I or at least one month but not more than 12 months in criminal history categories II through VI)”;

and in Note 2 by striking “(i.e., the minimum term of imprisonment specified in the applicable guideline range is ten months or more)” and inserting “(i.e., the minimum term of imprisonment specified in the applicable guideline range is 51 months or more in criminal history category I or 15 months or more in criminal history categories II through VI)”.

The Commentary to § 5C1.1 captioned “Application Notes” is amended—

in Note 3 by striking “(i.e., the minimum term of imprisonment specified in the applicable guideline

range is at least one but not more than nine months)” and inserting “(i.e., the minimum term of imprisonment specified in the applicable guideline range is at least four months but not more than 46 months in criminal history category I or at least one month but not more than 12 months in criminal history categories II through VI)”;

in Note 4 by striking “(i.e., the minimum term specified in the applicable guideline range is ten or twelve months)” and inserting “(i.e., the minimum term specified in the applicable guideline range is 51 months but not more than 87 months in criminal history category I, 15 months but not more than 18 months in criminal history categories II through IV, or 15 months in criminal history categories V and VI)”;

by striking “For example, where the guideline range is 10–16 months, a sentence of five months imprisonment followed by a term of supervised release with a condition requiring five months community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range” and inserting “For example, where the defendant is in criminal history category II and the guideline range is 15–21 months, a sentence of seven and a half months imprisonment followed by a term of supervised release with a condition requiring seven and a half months community confinement or home detention would satisfy the minimum term of imprisonment required by the guideline range”; and by striking “For example, where the guideline range is 10–16 months, both a sentence of five months imprisonment followed by a term of supervised release with a condition requiring six months of community confinement or home detention (under subsection (d)), and a sentence of ten months imprisonment followed by a term of supervised release with a condition requiring four months of community confinement or home detention (also under subsection (d)) would be within the guideline range” and inserting “For example, where the defendant is in criminal history category II and the guideline range is 15–21 months, both a sentence of seven and a half months imprisonment followed by a term of supervised release with a condition requiring eight months of community confinement or home detention (under subsection (d)), and a sentence of ten months imprisonment followed by a term of supervised release with a condition requiring five months of community confinement or home

detention (also under subsection (d)) would be within the guideline range”;

and in Note 8 by striking “(i.e., the minimum term of imprisonment specified in the applicable guideline range is 15 months or more)” and inserting “(i.e., the minimum term of imprisonment specified in the applicable guideline range is 97 months or more in criminal history category I, 21 months or more in criminal history categories II through IV, or 18 months or more in criminal history categories V and VI)”.

Issues for Comment:

1. Part B of the proposed amendment would expand Zones B and C of the Sentencing Table. The Commission seeks comment on whether it should expand Zones B and C in a different manner than the one set forth in the proposed amendment. Should the Commission expand Zone B to lower or higher offense levels than proposed? Should it expand Zone C to lower or higher offense levels than proposed? What data, statutory provisions, or policy considerations should determine the scope of Zones B and C?

2. The proposed expansion of Zone B would authorize sentences of probation with conditions of confinement as a sentencing option for current Zone C defendants, an option that was not available to such defendants before. Similarly, the proposed expansion of Zone C would authorize split sentences for current Zone D defendants, an option that was not available to such defendants before. The Commission seeks comment on whether the Commission should provide additional guidance to address these new Zone B and C defendants. If so, what guidance should the Commission provide?

3. The proposed expansion of Zones B and C would result in a zone structure that authorizes different sentencing options for certain defendants who are in different criminal history categories but have the same applicable guideline range (i.e., defendants whose guideline range is 15–21 or 18–24 months). The Commission seeks comment on whether authorizing different sentencing options for defendants who have the same applicable guideline range is appropriate. Would doing so raise any legal or policy concerns?

2. Career Offender

Synopsis of Proposed Amendment: In August 2025, the Commission identified as one of its policy priorities for the amendment cycle ending May 1, 2026, “[c]ontinued examination of the career offender guidelines, including (A) evaluating the impact, feasibility, and uniformity in application of alternative

approaches to the ‘categorical approach’ through workshops, field testing, and updating the data analyses set forth in the Commission’s 2016 report to Congress, titled *Career Offender Sentencing Enhancements*; and (B) possible consideration of amendments that might be appropriate.” U.S. Sent’g Comm’n, “Notice of Final Priorities,” 90 FR 39263 (Aug. 14, 2025).

The proposed amendment addresses recurrent criticism of the categorical approach and modified categorical approach in the context of § 4B1.1 (Career Offender). It sets forth options that would eliminate the use of the categorical approach for purposes of determining whether a federal offense is a “crime of violence” or “controlled substance offense” by listing federal offenses that qualify as a “crime of violence” or a “controlled substance offense.” The proposed amendment also provides options that would set forth an approach for purposes of determining whether a state offense is a “crime of violence” or “controlled substance offense” that does not impose some of the limitations of the “categorical approach” and “modified categorical approach” adopted by the Supreme Court in the context of certain statutory provisions. These changes are intended to correct some of the “odd” and “arbitrary” results that the categorical approach has produced relating to the “crime of violence” definition (see, e.g., *United States v. Davis*, 875 F.3d 592, 595 (11th Cir. 2017); *United States v. McCollum*, 885 F.3d 300, 309–14 (4th Cir. 2018) (Traxler, J., concurring); *id.* (Wilkinson, J., dissenting)). The proposed amendment also sets forth options to limit the scope of the “controlled substance offense” definition.

The Commission anticipates that the revised “crime of violence” definition set forth in the proposed amendment will identify offenses as presumptively violent in an overbroad manner. To counteract this overbreadth, each option provides necessary and critical exclusions and limitations to ensure that § 4B1.2 is properly tailored to capture offenses that are actually violent. These exclusions and limitations are necessary to the overall operation of the options set forth in the proposed amendment.

The Categorical Approach as Developed by Supreme Court Jurisprudence

Several statutes and guidelines provide enhanced penalties for defendants convicted of offenses that meet the definition of a particular category of crimes. Courts typically determine whether a conviction fits

within the definition of a particular category of crimes through the application of the “categorical approach” and “modified categorical approach,” as set forth by Supreme Court jurisprudence. The categorical and modified categorical approaches require courts to look only to the elements of the offense, rather than the particular facts underlying the conviction, to determine whether the offense meets the definition of a particular category of crimes. In applying the modified categorical approach, courts may look to certain additional sources of information, now commonly referred to as the “*Shepard* documents,” to determine the elements of the offense of conviction. See *Taylor v. United States*, 495 U.S. 575 (1990) (holding that, under the “categorical approach,” courts must compare the elements of the offense as described in the statute of conviction to the elements of the applicable definition of a particular category of crimes to determine if such offense criminalizes the same or a narrower range of conduct than the definition captures in order to serve as a predicate offense); *Shepard v. United States*, 544 U.S. 13 (2005) (holding that courts may use a “modified categorical approach” in cases where the statute of conviction is “overbroad,” that is, the statute contains multiple offenses with different offense elements).

Application of the Categorical Approach in the Guidelines

Supreme Court jurisprudence on this subject pertains to statutory provisions (e.g., 18 U.S.C. 924(e)), but courts have applied the categorical and modified categorical approaches to guideline provisions. For example, courts have used these approaches to determine if a conviction is a “crime of violence” for purposes of applying the career offender guideline at § 4B1.1.

General Criticism of the Categorical Approach as Developed by Supreme Court Jurisprudence

The Commission has received comment over the years regarding the complexity and limitations of the categorical approach as developed by Supreme Court jurisprudence. Courts have criticized the categorical approach as a “legal fiction,” in which an offense that a defendant in fact commits violently is deemed to be a legally non-violent offense because the offense *could* have been committed without violence, often leading to “odd” and “arbitrary” results (e.g., *United States v. Davis*, 875 F.3d 592, 595 (11th Cir. 2017); *United States v. McCollum*, 885

F.3d 300, 309–14 (4th Cir. 2018) (Traxler, J., concurring); *id.* (Wilkinson, J., dissenting)).

Feedback From Stakeholders

The Commission also has received input in roundtable discussions with several stakeholders with diverse perspectives and expertise within the criminal justice system. Some stakeholders have suggested that the Commission should eliminate the categorical approach to capture violent offenses that are currently excluded while also narrowing the scope of the “controlled substance offense” definition, particularly its reach over predicate offenses. Some stakeholders also have remarked that the Commission should limit the number of qualifying prior offenses overall for purposes of the career offender guideline. Some stakeholders have suggested that the Commission should condition which convictions qualify as predicate offenses by establishing a minimum sentence length threshold.

Changes Relating to “Crime of Violence”

The proposed amendment would make several changes to the definition of “crime of violence.”

First, the proposed amendment would place all provisions related to the definition of “crime of violence” in subsection (a). This includes moving the provision on “inchoate offenses included” as it relates to “crime of violence” into subsection (a) without substantive changes.

Second, the proposed amendment would delete the “force clause” from § 4B1.2(a).

Third, the proposed amendment would eliminate the use of the categorical approach for purposes of federal offenses by listing specific federal statutes proscribing violent offenses that qualify as “crime of violence.”

Fourth, the proposed amendment sets forth two options for amending the definition of “crime of violence” for purposes of state offenses.

Crime of Violence Option 1 would eliminate the use of the categorical approach for purposes of state offenses by providing a definition that is based on how an offense is designated (i.e., labeled) under federal or state law. It sets forth a list of violent offenses. A conviction for an offense that is labeled as one of the listed offenses is presumptively a qualifying “crime of violence.” This approach is intended to avoid an analysis requiring a categorical matching between statutory elements, instead capturing convictions for certain

types of offenses based on how they are labeled. This option brackets a preliminary list of offense labels, highlighting the Commission's interest in appropriately tailoring the scope of the offenses included in the list. The Commission also recognizes that jurisdictions name each of these offenses in various ways that may be appropriate to include in the list of qualifying labels. The proposed amendment includes issues for comment regarding any other offenses or labels that should be included in the definition to adequately capture these offenses in Crime of Violence Option 1.

Crime of Violence Option 2 would set forth an approach for purposes of determining whether a state offense is a "crime of violence" that does not impose some of the limitations of the "categorical approach" and "modified categorical approach." It would provide that a state offense is presumptively a "crime of violence" if the statute of conviction [meets each of the elements (other than federal jurisdictional requirements)] [proscribes [conduct][an act or omission] that [is described by][satisfies][meets] the elements (other than federal jurisdictional requirements)] of an offense set forth in the proposed definition, regardless of whether the statute of conviction includes additional elements (or means of committing any such elements) that are broader than those of the offense. It sets forth a list of violent offenses and defines most of these enumerated offenses by referring to a federal statute. Many of the listed offenses qualify as a "serious violent felony" under 18 U.S.C. 3559(c). Crime of Violence Option 2 also brackets the possibility of including additional offenses. It would define some of these additional offenses, either by referring to a statutory provision or providing a guidelines definition of such an offense. These changes are intended to eliminate the categorical approach's requirement that courts compare only the elements of the predicate offense as described in the statute of conviction to the elements of a generic, contemporary definition of the applicable enumerated offense. Instead, courts would be allowed to look to any part of a statute of conviction—the elements of any offense, *and* the means of committing any element of such offense, as described in the statute—and determine whether any part of the statute of conviction includes an offense that constitutes one of the enumerated offenses as defined in § 4B1.2.

Finally, the proposed amendment includes exclusions and limitations to the scope of the "crime of violence"

definition. These exclusions and limitations are integral to the operation of the proposed amendment. For example, the proposed amendment adopts as an exclusion sentence length criteria similar to those relating to petty and minor offenses from subsection (c)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History). In addition, as an important step in determining whether an offense is a "crime of violence," the proposed amendment provides that, after the government has met its burden to establish that an offense presumptively qualifies as a "crime of violence" under subsections (a)(1) through (a)(3), the defendant may rebut such presumption by establishing any of the following: (i) the conviction for the offense resulted in a sentence for which the defendant served less than [60 days][30 days] in prison; (ii) the acts for which the defendant is criminally liable [did not inflict, did not intend to inflict, and did not threaten to inflict [serious] bodily injury to another person][did not cause, did not intend to cause, and did not create a serious risk of physical harm to another person] during the commission of the offense; or (iii) the defendant's conduct during the commission of the offense was limited to reckless or negligent conduct.

Changes Relating to "Controlled Substance Offense"

The proposed amendment would make several changes to § 4B1.2 relating to the definition of "controlled substance offense."

First, the proposed amendment would place all provisions related to the definition of "controlled substance offense" in subsection (b). This includes moving the provision on "inchoate offenses included" as it relates to "controlled substance offense" into subsection (b) without substantive changes. In addition, it would move to subsection (b) the provision currently located in the Commentary to § 4B1.2 stating that a violation of 18 U.S.C. 924(c) or § 929(a) is a "controlled substance offense" if the offense of conviction established that the underlying offense was a "controlled substance offense."

Second, the proposed amendment sets forth two options for limiting the scope of the "controlled substance offense" definition.

Controlled Substance Offense Option 1 would revise the definition of "controlled substance offense" to exclude state drug offenses from the scope of its application by listing specific federal statutes relating to drug offenses. It lists the federal statutes that

are controlled substance offenses under the current definition to maintain the status quo with respect to federal drug trafficking statutes. The list includes the federal drug trafficking statutes that are specifically referenced in the career offender directive at 28 U.S.C. 994(h). The federal drug trafficking statutes that appear in brackets are not cited in the directive.

Controlled Substance Offense Option 2 would maintain the current definition of "controlled substance offense" but would limit its scope by setting a minimum sentence length requirement for a prior conviction to qualify as a "controlled substance offense." It provides three suboptions for limiting prior convictions. *Controlled Substance Offense Suboption 2A* would limit qualifying prior "controlled substance offense" convictions to only those convictions that are counted separately under § 4A1.1(a). *Controlled Substance Offense Suboption 2B* would limit qualifying prior convictions to only convictions of a controlled substance offense that resulted in a sentence imposed of [five years][three years][one year] or more that are counted separately under § 4A1.1(a) [or (b)]. Both Controlled Substance Offense Suboptions 2A and 2B bracket the possibility of including a provision that provides that a conviction for a controlled substance offense shall not qualify as a prior felony conviction under § 4B1.2 if the defendant can establish that the conviction resulted in a sentence for which the defendant served less than [five years][three years][one year] in prison. *Controlled Substance Offense Suboption 2C* would limit qualifying prior convictions to only convictions of a controlled substance offense that resulted in a sentence for which the defendant served [five years][three years][one year] or more in prison and that are counted separately under § 4A1.1(a) [or (b)].

Changes to Other Guidelines

The current definitions of "crime of violence" and "controlled substance offense" at § 4B1.2 are incorporated by reference in several other guidelines in the *Guidelines Manual*. See Commentary to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity),

§ 4A1.2 (Definitions and Instructions for Computing Criminal History), § 4B1.4 (Armed Career Criminal), § 7B1.1 (Classification of Violations (Policy Statement)), and § 7C1.1 (Classification of Violations (Policy Statement)).

Absent additional changes to these other guideline provisions, all revisions to the definitions in § 4B1.2 would be incorporated into those guidelines that currently reference the “crime of violence” and “controlled substance offense” definitions found in § 4B1.2.

Thus, the proposed amendment effectively sets forth three alternatives for addressing the references to “crime of violence” and “controlled substance offense” in § 2K2.1. First, absent additional changes to § 2K2.1, any revisions to the definitions in § 4B1.2 would be incorporated by reference to § 2K2.1. In addition to this approach of maintaining the current operation of § 2K2.1 by incorporating the definitions from § 4B1.2, two options are presented. *Firearms Option 1* would maintain the status quo by amending the Commentary to § 2K2.1 to incorporate the relevant part or parts of the current definitions from § 4B1.2. *Firearms Option 2* would amend the Commentary to § 2K2.1 to provide that “controlled substance offense” has the meaning given the term “serious drug offense” in 18 U.S.C. 924(e) and “crime of violence” has the meaning given the term “violent felony” in 18 U.S.C. 924(e). The proposed amendment also provides an issue for comment on how the references to “crime of violence” and “controlled substance” in the other guidelines cited above should be addressed.

Issues for Comment

The proposed amendment also sets forth issues for comment.

Proposed Amendment:

Section 4B1.2 is amended—
in subsection (a) by striking the following:

“*Crime of Violence.*—The term ‘crime of violence’ means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).”;

and inserting the following:

“*Crime of Violence.*—

(1) *In General.*—The term ‘crime of violence’ means any of the following offenses:

(A) *Federal Offenses.*—

(i) An offense under any of the following—

18 U.S.C. 113(a), [844(i)], 1111, 1112, 1201, 1951, [2111,] [2113,] [2118,] [2119,] 2241, 2242, 2244(a)(1)–(a)(2); 49 U.S.C. 46502].

(ii) An offense under federal law, punishable by imprisonment for a term exceeding one year, that involves the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

[*Crime of Violence Option 1 for Definition Applicable to State Offenses (List of Offense Labels):*

(B) *State Offenses.*—Any offense, punishable by imprisonment for a term exceeding one year, that is designated under state law as one of the following:

[Aggravated Assault;

Arson;

Extortion;

Kidnapping;

Murder;

Rape;

Robbery;

Sexual assault;

Voluntary manslaughter.])

[*Crime of Violence Option 2 for Definition Applicable to State Offenses (List of Enumerated Offenses as Described in Federal Statutes with Bracketed Additional Offenses):*

(B) *State Offenses.*—An offense under state law by whatever designation, punishable by imprisonment for a term exceeding one year, is presumptively a ‘crime of violence’ if the statute of conviction [meets each of the elements (other than federal jurisdictional requirements)] [proscribes [conduct][an act or omission] that [is described by] [satisfies][meets] the elements (other than federal jurisdictional requirements)] of one of the following offenses, regardless of whether the statute of conviction includes additional elements (or means of committing any such elements) that are broader than those of the offense:

Murder (as described in 18 U.S.C. 1111); manslaughter other than involuntary manslaughter (as described in 18 U.S.C. 1112); aggravated assault or battery (as described in 18 U.S.C. 113(a) (but not to include a state offense that would otherwise be simple or misdemeanor assault or simple or misdemeanor battery but for the identity of the victim or perpetrator)); [assault with intent to commit rape (as described below);] rape or aggravated sexual abuse (as described in 18 U.S.C. 2241); [sexual abuse (as described in 18 U.S.C. 2242);]

abusive sexual contact (as described in 18 U.S.C. 2244(a)(1), (a)(2)); [child abuse (as described below);] [domestic violence (as described below);] kidnapping (as described in 18 U.S.C. 1201); [hostage taking (as described below);] [human trafficking (as described below);] [aircraft piracy (as described in 49 U.S.C. 46502);] robbery (as described in 18 U.S.C. 1951(b)), § 2111, § 2113, or § 2118]; carjacking (as described in 18 U.S.C. 2119); [extortion (as described in 18 U.S.C. 1951(b)(2));] [coercion (as described below);] [arson (as described in 18 U.S.C. 844(i) (but not to include arson of property other than a building));] [firearms use (as described below);] [firearms possession (as described in 18 U.S.C. 924(c));] [or using weapons of mass destruction (as described in 18 U.S.C. 2332a)].

For purposes of offenses listed in subsection (a)(1)(B), use the following descriptions:

[‘Assault with intent to commit rape’ is engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in 18 U.S.C. 2241 and 2242).]

[‘Child abuse’ is any of the following: the intentional infliction of physical injury to a minor; the commission of any sexual act against a child under the age of 14 by any person 18 years of age or older; online enticement or coercion of a minor to engage in illegal sexual activity; or the production of child pornography or livestreaming of child sexual abuse.]

[‘Coercion’ is causing the performance or non-performance of any act by another person, which such other person has a legal right to do or to abstain from doing, by the use of actual or threatened force, violence, or fear thereof, including the use, or an express or implicit threat of use, of violence to cause harm to the person, reputation, or property of any person.]

[‘Domestic violence’ is committing any act with the intent to kill or injure a spouse, intimate partner, or dating partner.]

[‘Firearms use’ is an offense described in 18 U.S.C. 924(c) or § 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon during and relation to the offense in which the firearm was used.]

[‘Hostage taking’ is the seizure or detention with threats to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained.]

['Human trafficking' is any of the following: the recruitment, harboring, transportation, provision, or obtaining of a person for labor, services, or a commercial sex act, through the use of force, threat of force, fraud, or coercion; the recruitment, harboring, transportation, provision, or obtaining of a minor for the purpose of a commercial sex act; or the subjection of a person to involuntary servitude, peonage, debt bondage, or slavery.]]

(2) *Aiding and Abetting, Inchoate Offenses Included.*—The term 'crime of violence' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(3) *Exclusion.*—The term 'crime of violence' under subsections (a)(1) and (a)(2) does not include any offense where the sentence imposed was (i) a term of unsupervised probation; (ii) a term of [supervised] probation [of less than [one year][three years][five years]]; or (iii) a term of imprisonment of less than [60 days][30 days].

(4) *Limitations.*—An offense of conviction shall not qualify as a 'crime of violence' under subsections (a)(1) and (a)(2) if the defendant can establish any of the following:

(A) *Sentence Served.*—The conviction for the offense resulted in a sentence for which the defendant served less than [60 days][30 days] in prison.

(B) *[Serious] Bodily Injury.*—During the commission of the offense, the acts for which the defendant is criminally liable did not inflict, did not intend to inflict, and did not threaten to inflict [serious] bodily injury to another person[. *Provided*, however, that this limitation shall not apply to extortion and arson offenses].*[Physical Harm.*—During the commission of the offense, the acts for which the defendant is criminally liable did not cause, did not intend to cause, and did not create a serious risk of physical harm to another person[. *Provided*, however, that this limitation shall not apply to extortion and arson offenses].]

(C) *Recklessness and Negligence.*—The defendant's conduct during the commission of the offense was limited to reckless or negligent conduct. [However, an offense is not excluded under this provision if the defendant's conduct included extreme reckless conduct.]";

by striking subsections (b) and (c) as follows:

“(b) *Controlled Substance Offense.*—The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of a

controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.*, two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of § 4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.”;

and inserting the following new subsections (b) and (c):

[Controlled Substance Offense Option 1 for Limiting Scope of Controlled Substance Offense Definition (Limiting Definition to Federal Offenses):

“(b) *Controlled Substance Offense.*—

(1) *In General.*—The term 'controlled substance offense' means an offense under 21 U.S.C. 841, § 952(a), § 955, or § 959, or 46 U.S.C. 70503(a) or § 70506(b), [or 21 U.S.C. 843(a)(6), § 843(b), § 846 (if the object of the conspiracy or attempt was to commit an offense covered by this provision), § 856, § 860, § 960, or § 963 (if the object of the conspiracy or attempt was to commit an offense covered by this provision)].

(2) *Aiding and Abetting, Inchoate Offenses Included.*—The term 'controlled substance offense' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(3) *Additional Consideration.*—A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.'

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means (1) the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.*, two felony convictions of a crime of

violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (2) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of § 4A1.1(a), (b), or (c). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*.”]

[Controlled Substance Offense Option 2 for Limiting Scope of Controlled Substance Offense Definition (Limiting Prior Convictions for Controlled Substance Offenses):

“(b) *Controlled Substance Offense.*—

(1) *In General.*—The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(A) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(B) is an offense in conduct described in 46 U.S.C. 70503(a) or § 70506(b).

(2) *Aiding and Abetting, Inchoate Offenses Included.*—The term 'controlled substance offense' includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(3) *Additional Consideration.*—A violation of 18 U.S.C. 924(c) or § 929(a) is a 'controlled substance offense' if the offense of conviction established that the underlying offense was a 'controlled substance offense.'

[Controlled Substance Offense Suboption 2A (Limiting Prior Convictions to Sentences Receiving Points under § 4A1.1(a)):

(c) *Two Prior Felony Convictions.*—The term 'two prior felony convictions' means the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.*, two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*. For purposes of

determining whether the defendant sustained a felony conviction of a ‘crime of violence,’ use only any such felony conviction that is counted separately under § 4A1.1(a), (b), or (c). For purposes of determining whether the defendant sustained a felony conviction of a ‘controlled substance offense,’ use only any such felony conviction that is counted separately under § 4A1.1(a).

[A conviction for a controlled substance offense shall not qualify as a prior felony conviction under this provision if the defendant can establish that the conviction resulted in a sentence for which the defendant served less than [five years] [three years][one year] in prison.]]

[Controlled Substance Offense Suboption 2B (Limiting Prior Convictions Through a Sentence-Imposed Approach):

(c) *Two Prior Felony Convictions.*—The term ‘two prior felony convictions’ means the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.*, two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*. For purposes of determining whether the defendant sustained a felony conviction of a ‘crime of violence,’ use only any such felony conviction that is counted separately under § 4A1.1(a), (b), or (c). For purposes of determining whether the defendant sustained a felony conviction of a ‘controlled substance offense,’ use only any such felony conviction that (1) is counted separately under § 4A1.1(a) [or (b)], and (2) resulted in a sentence imposed of [five years][three years][one year] or more. For purposes of this provision, ‘sentence imposed’ has the meaning given the term ‘sentence of imprisonment’ in § 4A1.2(b) and Application Note 2 of the Commentary to § 4A1.2. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, regardless of when the revocation occurred.

[A conviction for a controlled substance offense shall not qualify as a prior felony conviction under this provision if the defendant can establish that the conviction resulted in a sentence for which the defendant served

less than [five years] [three years][one year] in prison.]]

[Controlled Substance Offense Suboption 2C (Limiting Prior Convictions Through a Time-Served Approach):

(c) *Two Prior Felony Convictions.*—The term ‘two prior felony convictions’ means the defendant committed the instant offense of conviction subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (*i.e.*, two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense). The date that a defendant sustained a conviction shall be the date that the guilt of the defendant has been established, whether by guilty plea, trial, or plea of *nolo contendere*. For purposes of determining whether the defendant sustained a felony conviction of a ‘crime of violence,’ use only any such felony conviction that is counted separately under § 4A1.1(a), (b), or (c). For purposes of determining whether the defendant sustained a felony conviction of a ‘controlled substance offense,’ use only any such felony conviction that (1) is counted separately under § 4A1.1(a) [or (b)], and (2) resulted in a sentence for which the defendant served [five years][three years][one year] or more in prison.]]”;

by striking subsections (d) and (e) as follows:

“(d) *Inchoate Offenses Included.*—The terms ‘crime of violence’ and ‘controlled substance offense’ include the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(e) *Additional Definitions.*—

(1) *Forcible Sex Offense.*—‘Forcible sex offense’ includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (A) an offense described in 18 U.S.C. 2241(c) or (B) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(2) *Extortion.*—‘Extortion’ is obtaining something of value from another by the wrongful use of (A) force, (B) fear of physical injury, or (C) threat of physical injury.

(3) *Robbery.*—‘Robbery’ is the unlawful taking or obtaining of personal

property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase ‘actual or threatened force’ refers to force that is sufficient to overcome a victim’s resistance.

(4) *Prior Felony Conviction.*—‘Prior felony conviction’ means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a federal conviction for an offense committed prior to the defendant’s eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).”;

and by inserting the following new subsection (d):

“(d) *Prior Felony Conviction.*—‘Prior felony conviction’ means a prior adult federal or state conviction for an offense punishable by death or imprisonment for a term exceeding one year, regardless of whether such offense is specifically designated as a felony and regardless of the actual sentence imposed. A conviction for an offense committed at age eighteen or older is an adult conviction. A conviction for an offense committed prior to age eighteen is an adult conviction if it is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted (*e.g.*, a federal conviction for an offense committed prior to the defendant’s eighteenth birthday is an adult conviction if the defendant was expressly proceeded against as an adult).”.

The Commentary to § 4B1.2 captioned “Application Notes” is amended—in the heading by striking “Notes” and inserting “Note”;

by striking Notes 1 and 2 as follows: “1. *Further Considerations Regarding ‘Crime of Violence’ and ‘Controlled Substance Offense’.*—For purposes of this guideline—

Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C.

841(c)(1)) is a ‘controlled substance offense.’

Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a ‘controlled substance offense.’

Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a ‘controlled substance offense’ if the offense of conviction established that the underlying offense (the offense facilitated) was a ‘controlled substance offense.’

Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a ‘controlled substance offense’ if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a ‘controlled substance offense.’

A violation of 18 U.S.C. 924(c) or § 929(a) is a ‘crime of violence’ or a ‘controlled substance offense’ if the offense of conviction established that the underlying offense was a ‘crime of violence’ or a ‘controlled substance offense’. (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

2. Offense of Conviction as Focus of Inquiry.—Section 4B1.1 (Career Offender) expressly provides that the instant and prior offenses must be crimes of violence or controlled substance offenses of which the defendant was convicted. Therefore, in determining whether an offense is a crime of violence or controlled substance for the purposes of § 4B1.1 (Career Offender), the offense of conviction (*i.e.*, the conduct of which the defendant was convicted) is the focus of inquiry.”;

by redesignating Note 3 as Note 1; and in Note 1 (as so redesignated) by inserting after “under § 4B1.1.” the following: “Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2.”.

The Commentary to § 4B1.2 is amended by inserting at the end the following new Commentary captioned “Background”:

“*Background:* Section 4B1.2 defines the terms ‘crime of violence,’ ‘controlled substance offense,’ and ‘two prior felony convictions’ for purposes of § 4B1.1 (Career Offender). Prior to [amendment

year], to determine if an offense met the definition of ‘crime of violence’ in § 4B1.2, courts typically used the categorical approach and the modified categorical approach, as set forth in Supreme Court jurisprudence. *See, e.g., Taylor v. United States*, 495 U.S. 575 (1990); *Shepard v. United States*, 544 U.S. 13 (2005); *Descamps v. United States*, 570 U.S. 254 (2013); *Mathis v. United States*, 579 U.S. 500 (2016). These Supreme Court cases, however, involved statutory provisions (*e.g.*, 18 U.S.C. 924(e)) rather than guideline provisions.

In [amendment year], the Commission amended § 4B1.2 to set forth an approach for determining whether an offense is a ‘crime of violence’ or ‘controlled substance offense’ that does not require the application of the *categorical approach* and *modified categorical approach* established by Supreme Court jurisprudence, or the use of a generic-offense analysis, where courts must determine whether the elements of the instant offense or prior offense match the elements of the ‘generic definition’ of certain offenses. *See* USSG App. C, Amendment [] (effective [Date]).”.

The Commentary to § 2K2.1 captioned “Application Notes” is amended—

[*Firearms Option 1 (Preserving Current Definitions of “Crime of Violence” and “Controlled Substance Offense” for § 2K2.1):*

in note 1 by striking the following: “‘Controlled substance offense’ has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

‘Crime of violence’ has the meaning given that term in § 4B1.2(a) and Application Note 1 of the Commentary to § 4B1.2.”;

by redesignating Notes 3 through 13 as Notes 4 through 14, respectively;

by inserting after Note 2 the following new Note 3:

“3. ‘Crime of Violence’ and ‘Controlled Substance Offense’.—

(A) *Crime of Violence.*—

(i) *Definition.*—‘Crime of violence’ means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (II) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C. 5845(a) or explosive material as defined in 18 U.S.C. 841(c).

(ii) *Additional Considerations.*—

(I) The term ‘crime of violence’ includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) ‘Forcible sex offense’ includes where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced. The offenses of sexual abuse of a minor and statutory rape are included only if the sexual abuse of a minor or statutory rape was (aa) an offense described in 18 U.S.C. 2241(c) or (bb) an offense under state law that would have been an offense under section 2241(c) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.

(III) ‘Extortion’ is obtaining something of value from another by the wrongful use of (aa) force, (bb) fear of physical injury, or (cc) threat of physical injury.

(IV) ‘Robbery’ is the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. The phrase ‘actual or threatened force’ refers to force that is sufficient to overcome a victim’s resistance.

(V) A violation of 18 U.S.C. 924(c) or § 929(a) is a ‘crime of violence’ if the offense of conviction established that the underlying offense was a ‘crime of violence.’ (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VI) In determining whether an offense is a crime of violence, the offense of conviction (*i.e.*, the conduct of which the defendant was convicted) is the focus of inquiry.

(B) *Controlled Substance Offense.*—

(i) *Definition.*—‘Controlled substance offense’ means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (I) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or (II) is an offense

described in 46 U.S.C. 70503(a) or § 70506(b).

(ii) *Additional Considerations.*—

(I) The term ‘controlled substance offense’ includes the offenses of aiding and abetting, attempting to commit, or conspiring to commit any such offense.

(II) Unlawfully possessing a listed chemical with intent to manufacture a controlled substance (21 U.S.C. 841(c)(1)) is a ‘controlled substance offense.’

(III) Unlawfully possessing a prohibited flask or equipment with intent to manufacture a controlled substance (21 U.S.C. 843(a)(6)) is a ‘controlled substance offense.’

(IV) Maintaining any place for the purpose of facilitating a drug offense (21 U.S.C. 856) is a ‘controlled substance offense’ if the offense of conviction established that the underlying offense (the offense facilitated) was a ‘controlled substance offense.’

(V) Using a communications facility in committing, causing, or facilitating a drug offense (21 U.S.C. 843(b)) is a ‘controlled substance offense’ if the offense of conviction established that the underlying offense (the offense committed, caused, or facilitated) was a ‘controlled substance offense.’

(VI) A violation of 18 U.S.C. 924(c) or § 929(a) is a ‘controlled substance offense’ if the offense of conviction established that the underlying offense was a ‘controlled substance offense.’ (Note that in the case of a prior 18 U.S.C. 924(c) or § 929(a) conviction, if the defendant also was convicted of the underlying offense, the sentences for the two prior convictions will be treated as a single sentence under § 4A1.2 (Definitions and Instructions for Computing Criminal History).)

(VII) In determining whether an offense is a controlled substance offense, the offense of conviction (*i.e.*, the conduct of which the defendant was convicted) is the focus of inquiry.”;

and in Note 13 (as so redesignated) by striking the following:

“‘Crime of violence’ and ‘controlled substance offense’ have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).”]

Firearms Option 2 (Providing Statutory Definitions of “Crime of Violence” and “Controlled Substance Offense” for § 2K2.1):

in Note 1 by striking the following:

“‘Controlled substance offense’ has the meaning given that term in § 4B1.2(b) and Application Note 1 of the Commentary to § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

‘Crime of violence’ has the meaning given that term in § 4B1.2(a) and

Application Note 1 of the Commentary to § 4B1.2.”;

and inserting the following:

“‘Controlled substance offense’ has the meaning given the term ‘serious drug offense’ in 18 U.S.C. 924(e).

‘Crime of violence’ has the meaning given the term ‘violent felony’ in 18 U.S.C. 924(e).”;

and in Note 12 by striking the following:

“‘Crime of violence’ and ‘controlled substance offense’ have the meaning given those terms in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).”]

Issues for Comment:

1. As explained in the synopsis of the proposed amendment, courts use the “categorical approach” and the “modified categorical approach,” as set forth in Supreme Court jurisprudence, to determine whether a conviction is a “crime of violence” or a “controlled substance offense” for purposes of § 4B1.2 (Definitions of Terms Used in Section 4B1.1). These Supreme Court cases, however, involved statutory provisions (*e.g.*, 18 U.S.C. 924(e)) rather than guideline provisions.

The Commission seeks comment on whether determinations under the career offender guideline should use a different approach, such as the approaches provided above. What are the advantages and disadvantages of the “categorical approach” as opposed to the approaches set forth in the proposed amendment above?

2. The proposed amendment would amend § 4B1.2(a) to eliminate the use of the categorical approach, for purposes of federal offenses, by listing specific federal statutes that qualify as a “crime of violence.” Are there federal offenses that are covered by the proposed “crime of violence” definition but should not be? Are there federal offenses that are not covered by the proposed definition but should be?

3. The proposed amendment sets forth two options for amending the definition of “crime of violence” for purposes of state offenses. Crime of Violence Option 1 would eliminate the use of the categorical approach for purposes of state offenses by identifying a crime of violence solely based on how an offense is designated (*i.e.*, labeled) under state law. Crime of Violence Option 2 would provide that a state offense is presumptively a “crime of violence” if the statute of conviction [meets each of the elements (other than federal jurisdictional requirements)] [proscribes [conduct][an act or omission] that [is described by] [satisfies][meets] the elements (other than federal jurisdictional requirements)] of an offense set forth in the proposed

definition, regardless of whether the statute of conviction includes additional elements (or means of committing any such elements) that are broader than those of the offense. It sets forth a list of violent offenses and defines most of these enumerated offenses by referring to how that offense is described in a federal statute. Many of the listed offenses qualify as a “serious violent felony” under 18 U.S.C. 3559(c). Crime of Violence Option 2 also brackets the possibility of including additional offenses. It would define some of these additional offenses, either by referring to how that offense is described in a statute or by providing a guidelines definition of such an offense.

The Commission seeks comment generally on each option and whether either of the approaches provided for purposes of the “crime of violence” definition is appropriate and would cover most violent offenses under state law. Which of the options, if either, should the Commission adopt? Should the Commission consider a different approach to revise the “crime of violence” definition? Are there specific state offenses that would be included in the definition of “crime of violence” set forth in these options that should not be considered crimes of violence? Are there specific state offenses that would not be included in the definition set forth in these options, but should be? For example, should the Commission include offenses such as terroristic threats and resisting arrest in the list of offenses that should qualify as a “crime of violence”?

The Commission also seeks comment on whether the list of offenses included for purposes of federal offenses and state offenses should generally capture the same offenses. Should the Commission differentiate between the types of federal offenses and state offenses that should qualify as crimes of violence by providing different list of offenses?

Finally, the Commission seeks comment on the proposed definitions for the enumerated offenses listed in Crime of Violence Option 2. Are these definitions appropriate? Should the Commission provide different definitions? If so, what definitions should the Commission provide?

4. Crime of Violence Option 1 for amending the definition of “crime of violence” for purposes of state offenses would eliminate the use of the categorical approach by providing a definition that is based on how an offense is designated (*i.e.*, labeled) under state law. This option brackets a preliminary list of offense labels. The Commission recognizes that

jurisdictions name each of these offenses in various ways that may be appropriate to include in the definition of crime of violence. For example, the Commission has identified that jurisdictions use different labels for the highest degree of murder, including such labels as *First Degree Murder*, *Murder in the First Degree*, *Deliberate Homicide*, *First Degree Intentional Homicide*, *Aggravated Murder*, and *Capital Murder*. Similarly, the Commission has identified the same issue with robbery; states and United States territories use different labels such as *Robbery in the First Degree*, *Robbery in the Second Degree*, *Robbery in the Third Degree*, *Aggravated Robbery*, *First Degree Aggravated Robbery*, *Armed Robbery*, *Carjacking*, *Armed Carjacking*, *Robbery Involving Occupied Motor Vehicle*, *Aggravated Vehicular Hijacking*, *Vehicular Hijacking*, *Robbery by Intimidation*, *Robbery with a Dangerous Weapon*, *Assault with Intent to Rob*, and *Robbery with Firearms or Other Dangerous Weapons*. The Commission anticipates identifying similar issues with the other offenses listed in Crime of Violence Option 1.

For purposes of Crime of Violence Option 1, the Commission intends that violent offenses, such as aggravated assault, arson, extortion, kidnapping, murder, rape, robbery, sexual assault, and voluntary manslaughter, by whatever name they are known under state law, are included in the crime of violence definition. The Commission seeks comment on whether the list of offenses provided as part of the “crime of violence” definition should include the different ways in which these offenses are labeled by different jurisdictions. If so, to what level of specificity should the Commission include any such offense labels? The Commission also seeks comment on how each of the states and United States territories name each of these offenses. Finally, the Commission seeks comment on whether other labels should be included in the definition to adequately capture these offenses in Crime of Violence Option 1. Are there states that do not include names, labels, or titles in their criminal code that would need to be addressed in another way? As an alternative, instead of listing offense labels, should the Commission provide a list of the specific state statutes that should qualify as “crime of violence”? Would an approach that lists specific state statutes as crimes of violence be more easily administered? If so, which state statutes should be included?

5. The proposed amendment provides an exclusion to limit the scope of the

definition of “crime of violence” by adopting a sentence length criteria similar to the one relating to petty and minor offenses from subsection (c)(2) of § 4A1.2 (Definitions and Instructions for Computing Criminal History), and sets limitations if the defendant can establish that: (i) the conviction for the offense resulted in a sentence for which the defendant served less than [60 days][30 days] in prison; (ii) the acts for which the defendant is criminally liable [did not inflict, did not intend to inflict, and did not threaten to inflict [serious] bodily injury to another person][did not cause, did not intend to cause, and did not create a serious risk of physical harm to another person] during the commission of the offense; or (iii) the defendant’s conduct during the commission of the offense was limited to reckless or negligent conduct.

The Commission seeks comment on whether these limitations are appropriate. Do these limitations appropriately exclude prior convictions that should not qualify as crimes of violence under § 4B1.2? Are there additional or different limitations that the Commission should include? For example, should the Commission exclude prior convictions for robbery and extortion offenses if the defendant can establish that no firearm or other dangerous weapon was used in the offense, no threat of use of a firearm or other dangerous weapon was involved in the offense, and the offense did not result in death or serious bodily injury to any person? Should the Commission exclude prior convictions for arson offenses if the defendant can establish that the offense posed, and the defendant reasonably believed the offense posed, no threat to human life?

One of the limitations provides that an offense of conviction shall not qualify as a “crime of violence” if the defendant can establish that the defendant’s conduct during the commission of the offense was limited to reckless or negligent conduct. With this limitation, the Commission intends to require a *mens rea* more culpable than recklessness or negligence for the offense to qualify as a crime of violence. The Commission seeks comment on whether the language of this limitation accomplishes this goal or whether there is a better way to do so.

6. The proposed amendment sets forth two options for limiting the scope of the “controlled substance offense” definition. Controlled Substance Offense Option 1 would revise the definition of “controlled substance offense” to exclude state drug offenses from the scope of its application by listing specific federal statutes relating

to drug offenses. The proposed amendment lists the federal statutes that are controlled substance offenses under the current definition to maintain the status quo. The list includes the federal drug trafficking statutes that are specifically referenced in the career offender directive at 28 U.S.C. 994(h). The federal drug trafficking statutes that appear in brackets are not cited in the directive. The Commission seeks comment generally on whether the approach set forth in this option is appropriate. Are there federal drug offenses that are covered by the proposed amendment but should not be? Are there federal drug offenses that are not covered by the proposed amendment but should be?

7. Controlled Substance Offense Option 2 for limiting the scope of the “controlled substance offense” definition would maintain the current definition but would limit its scope by setting a minimum sentence length requirement for a prior conviction to qualify as a “controlled substance offense.” It provides three suboptions for such limitation. The Commission seeks comment on whether it should adopt Controlled Substance Offense Option 2 by keeping the current definition of “controlled substance offense” and limiting qualifying prior convictions to only convictions that received a certain number of criminal history points or a certain length of sentence imposed or served. If so, how should the Commission set that limit and on what basis? The Commission also seeks comment on whether including a minimum sentence length requirement for prior offenses to qualify as a “controlled substance offense” is consistent with the Commission’s authority under 28 U.S.C. 994(h). Should the Commission differentiate between “crimes of violence” and “controlled substance offenses” in setting a minimum sentence length requirement?

The Commission also seeks comment on each of the suboptions. Which suboption, if any, should the Commission adopt?

8. Controlled Substance Offense Suboptions 2A and 2B for setting a minimum sentence length requirement for a prior conviction to qualify as a “controlled substance offense” bracket the possibility of including a provision that states that a conviction of a controlled substance offense shall not qualify as a prior felony conviction under § 4B1.2 if the defendant can establish that the conviction resulted in a sentence for which the defendant served less than [five years][three years][one year] in prison. The

Commission seeks comment on what types of sentences should be counted for purposes of this provision. For example, should revocation sentences count to determine whether the defendant served less than [five years][three years][one year] in prison?

9. The Commission seeks comment on whether the definitions of “crime of violence” and “controlled substance offense” should still address the offenses of attempting to commit a substantive offense and conspiracy to commit a substantive offense. Should the Commission provide additional requirements or guidance to address these types of offenses?

10. As indicated above, several guidelines use the terms “crime of violence” and “controlled substance offense” and define these terms by making specific reference to § 4B1.2. *See* the Commentary to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity), § 4A1.2 (Definitions and Instructions for Computing Criminal History), § 4B1.4 (Armed Career Criminal), § 7B1.1 (Classification of Violations (Policy Statement)), and § 7C1.1 (Classification of Violations (Policy Statement)).

The proposed amendment effectively sets forth three alternatives for addressing the references to “crime of violence” and “controlled substance offense” in § 2K2.1. First, absent additional changes to § 2K2.1, any revisions to the definitions in § 4B1.2 would be incorporated by reference to § 2K2.1. In addition to the approach of maintaining the current operation of § 2K2.1 by incorporating the definitions from § 4B1.2, two options are presented. Firearms Option 1 would maintain the status quo by amending the Commentary to § 2K2.1 to incorporate the relevant part or parts of the current definitions from § 4B1.2. Firearms Option 2 would amend the Commentary to § 2K2.1 to provide that “controlled substance offense” has the meaning given the term “serious drug offense” in 18 U.S.C. 924(e) and “crime of violence” has the meaning given the term “violent felony” in 18 U.S.C. 924(e). The Commission seeks comment on each of these options, or, in the alternative, whether § 2K2.1 should continue to define the terms “crime of violence” and “controlled substance

offense” by making specific references to § 4B1.2 if the Commission were to promulgate the proposed amendment.

Similarly, the Commission seeks comment on the approach it should take to address the references to “crime of violence” and “controlled substance offense” in the other guidelines cited above. Should the Commission maintain the status quo by amending the Commentary to any or all of these guidelines to incorporate the relevant parts of § 4B1.2? Should the Commission instead continue to define these terms by making specific references to § 4B1.2 if the Commission were to promulgate the proposed amendment making changes to the “crime of violence” and “controlled substance offense” definitions contained in § 4B1.2? Should the Commission consider moving these definitions from the commentary of these guidelines to the guidelines themselves?

3. Circuit Conflicts Concerning § 4B1.2(b)

Synopsis of Proposed Amendment:

The proposed amendment addresses two circuit conflicts involving the definition of “controlled substance offense” in subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1).

Section § 4B1.2(b) defines a “controlled substance offense” as “an offense under federal or state law . . . that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.” Several other guidelines incorporate this definition by reference, often providing for higher base offense levels if the defendant committed the instant offense after sustaining a conviction for a “controlled substance offense.” *See* §§ 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), 4B1.4 (Armed Career Criminal), 7B1.1 (Classification of Violations (Policy Statement)), and 7C1.1 (Classification of Violations (Policy Statement)).

The first circuit conflict concerns whether the definition of a “controlled substance offense” in § 4B1.2(b) only includes substances controlled by the federal Controlled Substances Act (“CSA”) (21 U.S.C. 801 *et seq.*), or

whether the definition also includes substances controlled by applicable state law. This circuit conflict prompted Justice Sotomayor, joined by Justice Barrett, to call for the Commission to “address this division to ensure fair and uniform application of the [g]uidelines.” *Guerrant v. United States*, 142 S. Ct. 640, 640–41 (2022) (statement of Sotomayor, J., with whom Barrett, J. joins, respecting the denial of certiorari); *Wiggins v. United States*, 145 S. Ct. 2621, 2622 (2025) (statement of Sotomayor, J., with whom Barrett, J. joins, respecting denial of certiorari) (collecting cases).

The Second, Fifth, and Ninth Circuits have held that a “controlled substance offense” only includes offenses involving substances controlled by federal law (the CSA), not offenses that include substances that a state schedule lists as a controlled substance, but the CSA does not. *See United States v. Minor*, 121 F.4th 1085, 1089–1090 (5th Cir. 2024) (holding that state-law offense counts only if it is a categorical match for a federal offense); *United States v. Bautista*, 989 F.3d 698, 705 (9th Cir. 2021) (conviction under Arizona statute criminalizing hemp as well as marijuana is not a “controlled substance offense” because hemp is not listed in the CSA); *United States v. Townsend*, 897 F.3d 66, 74 (2d Cir. 2018) (conviction under New York statute prohibiting the sale of Human Chorionic Gonadotropin (“HCG”) is not a “controlled substance offense” because HCG is not controlled under the CSA). In these circuits, a state drug offense will not qualify as a “controlled substance offense” if the state statute includes any substance not controlled under federal law, even if the offense involved a controlled substance that is covered by the CSA. Because the lists of substances controlled under federal and state law rarely match, and many state statutes do not require proof of the exact substance as an element of the offense, this approach has the practical effect of eliminating many state offenses involving controlled substances under federal law.

By contrast, the Third, Fourth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits have held that a state conviction that includes a controlled substance that is not identified in the CSA can qualify as a “controlled substance offense” under the guidelines. *See United States v. Dubois*, 94 F.4th 1284, 1294–96 (11th Cir. 2024) (“A drug regulated by state law is a ‘controlled substance’ for state predicate offenses, even if federal law does not regulate that drug.”), *cert. granted, judgment vacated sub nom. Dubois v. United States*, 145 S. Ct. 1041 (2025), reinstated by 139

F.4th 887 (11th Cir. 2025); *United States v. Lewis*, 58 F.4th 764, 771 (3d Cir. 2023) (“a ‘controlled substance’ under [§ 4B1.2(b)] is a drug regulated by either state or federal law”); *United States v. Jones*, 81 F.4th 591, 598–99 (6th Cir. 2023) (controlled substance offense includes “state-law controlled substance offense[s]”); *United States v. Jones*, 15 F.4th 1288, 1295 (10th Cir. 2021) (definition of “controlled substance offense” includes “state-law controlled substance offenses, involving substances not found on the CSA”); *United States v. Henderson*, 11 F.4th 713, 718 (8th Cir. 2021) (“There is no requirement that the particular substance underlying the state offense is also controlled under a distinct federal law.”); *United States v. Ward*, 972 F.3d 364, 374 (4th Cir. 2020) (“[T]he Commission has specified that we look to either the federal or state law of conviction to define whether an offense will qualify [as a controlled substance offense].”); *United States v. Ruth*, 966 F.3d 642, 654 (7th Cir. 2020) (“The career-offender guideline defines the term controlled substance offense broadly, and the definition is most plainly read to include state-law offenses[.]” (citation and quotation omitted)).

The second circuit conflict concerns which temporal version of the applicable drug schedule (whether federal or state) should be used to decide if a prior offense qualifies as a predicate “controlled substance offense”: (1) the schedule in place at the time of defendant’s prior conviction; or (2) the schedule in place at the time of the instant offense or sentencing for the instant federal offense. The interpretations of the Third, Fourth, Sixth, Eighth, and Eleventh Circuits conflict with those of the First, Second, Fifth, and Ninth Circuits. Compare *United States v. Nelson*, 151 F.4th 577 (4th Cir. 2025); *Dubois*, 94 F.4th at 1296; *Lewis*, 58 F.4th at 771–73; *United States v. Perez*, 46 F.4th 691, 703 (8th Cir. 2022); *United States v. Clark*, 46 F.4th 404, 408 (6th Cir. 2022) (all using time of the prior convictions), with *United States v. Minor*, 121 F.4th 1085 (5th Cir. 2024); *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021), and *United States v. Abdulaziz*, 998 F.3d 519, 523 (1st Cir. 2021) (all using time of sentencing); see also *United States v. Gibson*, 55 F.4th 153, 165 (2d Cir. 2022), adhered to on reh’g, 60 F.4th 720 (2d Cir. 2023) (not time of prior conviction).

The Sixth Circuit has concluded that courts should use the drug schedule in place at the time of defendant’s prior conviction, reasoning that the guideline’s language “indicates that the court should take a backward-looking

approach and assess the nature of the predicate offenses at the time the convictions for those offenses occurred.” See *United States v. Clark*, 46 F.4th 404, 408 (6th Cir. 2022) (“‘controlled substance’ should be defined with reference to ‘the drug schedules in place at the time of the prior convictions at issue’”). Likewise, the Third, Eighth, and Eleventh Circuits have held that whether a conviction qualifies as a controlled substance offense depends on the law at the time of the prior conviction. *Dubois*, 94 F.4th at 1298 (“We adopt a time-of-state-conviction rule: the term ‘controlled substance,’ . . . means a substance regulated by state law when the defendant was convicted of the state drug offense, even if it is no longer regulated when the defendant is sentenced for the federal firearm offense.”); *Lewis*, 58 F.4th at 771–73 (“Simply put, controlled substances include those regulated at the time of the predicate conviction.”); *United States v. Perez*, 46 F.4th 691, 703 (8th Cir. 2022) (“And this court has also held that whether a prior state conviction is a controlled substance offense for Guidelines purposes is based on the law at the time of conviction, without reference to current state law.” (citation omitted)). More recently, the Fourth Circuit held that courts must consult the federal drug schedules in effect at the time of the prior conviction when determining whether a prior offense qualifies as a “controlled substance offense” under § 4B1.2(b). *United States v. Nelson*, 151 F.4th 577 (4th Cir. 2025).

By contrast, the First, Fifth, and Ninth Circuits use the schedule in place at the time of sentencing for the instant federal offense. Accordingly, these circuits compare the elements of the statute of conviction with the current version of the CSA and do not treat a prior conviction as a controlled substance offense if the statute of conviction encompasses conduct that is not currently criminalized by the CSA. See *Minor*, 121 F.4th 1085 (holding that the term “controlled substance” hinges on the definition of “controlled substance” in the CSA “in place at the time of sentencing for the instant offense.”); *United States v. Bautista*, 989 F.3d 698, 703 (9th Cir. 2021) (“[A] court must ask whether [a] prior crime qualifies as a ‘controlled substance offense’ under the CSA and the corresponding [g]uideline at the time of sentencing.”); *United States v. Abdulaziz*, 998 F.3d 519, 523 (1st Cir. 2021) (“[I]nsofar as the CSA’s drug schedules were incorporated into the guideline itself at the time of [] sentencing, . . . we must look to the

version of those drug schedules that were ‘in effect’ at that time to determine what constituted a ‘controlled substance’ at that time.” (citations omitted)).

The proposed amendment would amend § 4A1.2(b) to address both circuit conflicts.

The proposed amendment would first address the circuit conflict relating to whether a substance involved in an offense must be controlled under federal law by the CSA to qualify as a “controlled substance offense” under § 4B1.2(b). Two options are provided:

Option 1 would set forth a definition of “controlled substance” that adopts the approach of the Second, Fifth, and Ninth Circuits. It would limit the definition of the term to substances that are specifically included in the CSA. This option would resolve the circuit conflict so as to preserve the status quo in circuits that categorically exclude violations of those state statutes that control substances not included in the CSA.

Option 2 would set forth a definition of “controlled substance” that adopts the approach of the Third, Fourth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits. It would provide that the term “controlled substance” refers to substances either included in the CSA or otherwise controlled under applicable state law.

The proposed amendment would then address the circuit conflict relating to which version of the applicable drug schedule determines whether a prior conviction qualifies as a “controlled substance offense” under § 4B1.2(b). Two options are provided.

Option 1 would adopt the First, Fifth, and Ninth Circuits’ approach of using the schedule in place at the time of sentencing for the instant federal offense.

Option 2 would adopt the Third, Fourth, Sixth, Eighth, and Eleventh Circuits’ approach of using the schedule in place at the time of defendant’s original conviction.

The proposed amendment would also amend the Commentary to § 2L1.2 (Unlawfully Entering or Remaining in the United States), which contains a definition for the term “drug trafficking offense” that closely tracks the definition of “controlled substance offense” in § 4B1.2(b). It sets forth the same options discussed above for § 4B1.2(b).

Issues for comment are also provided.

Proposed Amendment:

Section 4B1.2(b) is amended by striking the following:

“*Controlled Substance Offense.*—The term ‘controlled substance offense’

means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).”;

and inserting the following:

“**Controlled Substance Offense.**—The term ‘controlled substance offense’ means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—

(1) prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense; or

(2) is an offense described in 46 U.S.C. 70503(a) or § 70506(b).

[Circuit Conflict 1 (Whether a Substance Involved in an Offense Must Be Controlled by the Controlled Substances Act To Qualify as a “Controlled Substance Offense” Under § 4B1.2(b))]

[Option 1 (Second, Fifth, and Ninth Circuits—Controlled Substances under Federal Law):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, listed in schedule I, II, III, IV, or V of the Controlled Substances Act (21 U.S.C. 801 *et seq.*.)]

[Option 2 (Third, Fourth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits—Controlled Substances under Federal or State Law):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, either listed in schedule I, II, III, IV, or V of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) or otherwise controlled under applicable state law.]

[Circuit Conflict 2 (Which Version of the Applicable Drug Schedule Determines Whether a Prior Conviction Qualifies as a “Controlled Substance Offense” Under § 4B1.2(b))]

[Option 1 (First, Fifth, and Ninth Circuits—Schedule at Time of Sentencing of Instant Offense):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, that is controlled under the

applicable law at the time of sentencing for the instant offense.]

[Option 2 (Third, Fourth, Sixth, Eighth, and Eleventh Circuits—Schedule at Time of Original Conviction):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, that was controlled under the applicable law at the time the defendant was originally convicted for the offense.]”.

The Commentary to § 2L1.2 captioned “Application Notes” is amended in Note 2 by striking the following:

“ ‘Drug trafficking offense’ means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.”;

and inserting the following:

“ ‘Drug trafficking offense’ means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.

[Circuit Conflict 1 (Whether a Substance Involved in an Offense Must Be Controlled by the Controlled Substances Act To Qualify as a “Drug Trafficking Offense” Under § 2L1.2)]

[Option 1 (Second, Fifth, and Ninth Circuits—Controlled Substances under Federal Law):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, listed in schedule I, II, III, IV, or V of the Controlled Substances Act (21 U.S.C. 801 *et seq.*.)]

[Option 2 (Third, Fourth, Sixth, Seventh, Eighth, Tenth, and Eleventh Circuits—Controlled Substances under Federal or State Law):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, either listed in schedule I, II, III, IV, or V of the Controlled Substances Act (21 U.S.C. 801 *et seq.*) or otherwise controlled under applicable state law.]

[Circuit Conflict 2 (Which Version of the Applicable Drug Schedule Determines Whether a Prior Conviction Qualifies as a “Drug Trafficking Offense” Under § 2L1.2)]

[Option 1 (First, Fifth, and Ninth Circuits—Schedule at Time of Sentencing of Instant Offense):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, that is controlled under the applicable law at the time of sentencing for the instant offense.]

[Option 2 (Third, Fourth, Sixth, Eighth, and Eleventh Circuits—Schedule at Time of Original Conviction):

For purposes of this provision, the term ‘controlled substance’ refers to a drug or other substance, or immediate precursor, that was controlled under the applicable law at the time the defendant was originally convicted for the offense.]”.

Issues for Comment:

1. The proposed amendment would amend subsection (b) of § 4B1.2 (Definitions of Terms Used in Section 4B1.1) to address the circuit conflicts described in the synopsis above by providing two options for each circuit conflict. The Commission seeks comment on whether it should address the circuit conflicts in a manner other than the options provided in the proposed amendment. If so, how?

2. Several guidelines use the term “controlled substance offense” and define the terms by making specific reference to § 4B1.2. *See, e.g.,* the Commentary to § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), § 4B1.4 (Armed Career Criminal), § 7B1.1 (Classification of Violations (Policy Statement)), and § 7C1.1 (Classification of Violations (Policy Statement)).

If the Commission were to promulgate any of the options set forth in the proposed amendment for each circuit conflict, should any or all of these guidelines continue to define the term “controlled substance offense” by making specific references to § 4B1.2? Should the Commission maintain the status quo by amending the Commentary to these guidelines to incorporate the relevant parts of § 4B1.2? Should the Commission consider moving these definitions from the commentary of these guidelines to the guidelines themselves?

4. Human Smuggling

Synopsis of Proposed Amendment:

This proposed amendment is a result of the Commission's "[e]xamination of § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) to ensure the guidelines appropriately account for the consideration of factors such as the number of humans smuggled and whether the offense involved bodily injury or sexual assault." See U.S. Sent'g Comm'n, "Notice of Final Priorities," 90 FR 39264 (Aug. 14, 2025).

Offenses involving the smuggling, transporting, and harboring of unlawful aliens and aiding, abetting, and conspiring to commit such offenses, are referenced to § 2L1.1. The guideline contains a specific offense characteristic that provides a tiered enhancement based on the number of unlawful aliens who were smuggled, transported, or harbored. USSG § 2L1.1(b)(2). Offenses involving 6–24 aliens receive a 3-level increase, those involving 25–99 aliens receive a 6-level increase, and those involving 100 or more aliens receive a 9-level increase. *Id.* Commission data show that almost sixty percent (59%) of cases sentenced under § 2L1.1 in fiscal year 2024 did not receive an enhancement under § 2L1.1(b)(2) for the number of aliens involved in the offense. On average, those cases involved three aliens. When the enhancement was applied, the substantial majority of cases received the 3-level increase at subsection (b)(2)(A) (6–24 aliens). In those cases that received the 3-level enhancement, the offense involved an average of 12 aliens, while cases that received the 6-level enhancement at subsection (b)(2)(B) involved an average of 50 aliens. For those cases that received the highest increase of nine levels at subsection (b)(2)(C) because the offense involved 100 or more aliens, the average number of aliens was 832. However, the median number of aliens for that group was 175.

For an offense in which any person died or sustained a bodily injury, § 2L1.1(b)(7) provides a tiered enhancement based on the severity of the injury sustained. USSG § 2L1.1(b)(7). Under the tiered enhancement, "bodily injury" results in a 2-level increase, "serious bodily injury" results in a 4-level increase, "permanent or life-threatening injury" results in a 6-level increase, and "death" results in a 10-level increase. *Id.* The Commentary to § 2L1.1 refers to the definition of "serious bodily injury" in Application Note 1 of § 1B1.1 (Application Instructions). That definition provides that "'serious bodily

injury' is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 [(Aggravated sexual abuse)] or § 2242 [(Sexual abuse)] or any similar offense under state law." USSG § 1B1.1, comment. (n.1(L)).

In comments to the Commission, the Department of Justice expressed concerns regarding § 2L1.1. The Department opined that the guideline does not reflect a congressional intent "to provide increased punishment for each alien smuggled." Letter from Scott Meisler, Deputy Chief, Crim. Div., U.S. Dep't of Just., to the Hon. Carlton W. Reeves, Chair, U.S. Sent'g Comm'n, 14 (July 18, 2025), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-comment/202507/90FR24170_public-comment_R.pdf#page=97. The Department also expressed that § 2L1.1 does not adequately address human smuggling cases in which a victim was sexually abused or otherwise sexually assaulted. *Id.*

The proposed amendment would revise § 2L1.1 to respond to these concerns.

The proposed amendment would amend § 2L1.1(b)(2) based on the Commission's sentencing data by creating more tiers based on the number of aliens involved and decreasing the number of aliens in each tier. Under the proposed amendment, offenses involving [6]–12 aliens would receive a 3-level enhancement, offenses involving 13–18 aliens would receive a [4]-level enhancement, offenses involving 19–24 aliens would receive a [5]-level enhancement, offenses involving 25–49 aliens would receive a [6]-level enhancement, offenses involving 50–99 aliens would receive a [7]-level enhancement, and offenses involving 100 or more aliens would receive a 9-level enhancement.

The proposed amendment would insert a new subsection (b)(6) applying a 2-level enhancement if the offense involved concealing persons in the trunk or engine compartment of a motor vehicle or carrying substantially more passengers than the rated capacity of a motor vehicle or vessel. If the resulting offense level is less than 18, then the new provision would provide that the offense level be increased to level 18. The existing subsection (b)(6) would be renumbered as subsection (b)(7) and would be amended to provide that it does not apply to conduct for which the defendant received an enhancement under subsection (b)(5) or new subsection (b)(6). Subsection (b)(7) (as renumbered) would also expressly

provide that "serious bodily injury" includes criminal sexual abuse.

The proposed amendment would amend subsection (b)(8) (as renumbered) providing an enhancement for an offense involving death or bodily injury. It would bracket the possibility of amending subsection (b)(8) (as renumbered) so that a 2-level enhancement would apply to an offense in which a person was subjected to conduct constituting criminal sexual contact under 18 U.S.C. 2244. It would also clarify that the 4-level enhancement for serious bodily injury applies to cases involving criminal sexual abuse.

The proposed amendment provides two options for adding a provision to subsection (b)(8) (as renumbered) providing for an enhancement for cases in which multiple people die or sustain an injury.

Option 1 would add a new subdivision to (b)(8) (as renumbered) providing a new tiered enhancement if additional people died or sustained an injury. It contains two bracketed possibilities for the enhancement. The first bracketed possibility would apply if the offense resulted in death, any degree of bodily injury[, or criminal sexual contact] to additional people. The second bracketed possibility would apply if the defendant intentionally or knowingly caused death, any degree of bodily injury[, or criminal sexual contact] to additional people. Under both possibilities, an offense would be subject to a [1]-level increase if one or two additional people died or sustained any degree of bodily injury; and an offense would be subject to a [2]-level increase if three or more people died or sustained any degree of bodily injury.

Option 2 would add a new subdivision to (b)(8) (as renumbered) providing a new tiered enhancement if additional people died or sustained permanent or life-threatening injury. It contains two bracketed possibilities for the enhancement. The first bracketed possibility would apply if the offense resulted in death or permanent or life-threatening bodily injury to additional people. The second bracketed possibility would apply if the defendant intentionally or knowingly caused death or permanent or life-threatening bodily injury to additional people. Under both possibilities, an offense would be subject to a [3]-level increase if one or two additional people died or sustained permanent or life-threatening injury; and an offense would be subject to a [6]-level increase if three or more people died or sustained permanent or life-threatening injury.

Finally, the proposed amendment brackets two possibilities for adding a

new cross reference at § 2L1.1(c)(2) instructing courts to apply the appropriate guideline from Chapter Two, Part A, Subpart 3 depending on whether there was conduct described in 18 U.S.C. 2241–2244. Under the first

bracketed possibility, the cross reference would apply if the offense involved such conduct. Under the second bracketed possibility, the cross reference would apply if the defendant engaged in such conduct.

Issues for comment are also provided. *Proposed Amendment:* Section 2L1.1(b) is amended—in paragraph (2) by striking the following: “Number of Unlawful Aliens

Smuggled, transported, or harbored	Increase in level
(A) 6–24	add 3.
(B) 25–99	add 6.
(C) 100 or more	add 9.”;.

and inserting the following:

“Number of Unlawful Aliens

Smuggled, transported, or harbored	Increase in level
(A) [6]–12	add 3.
(B) 13–18	add [4].
(C) 19–24	add [5].
(D) 25–49	add [6].
(E) 50–99	add [7].
(F) 100 or more	add 9.”;.

by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively;

by striking paragraphs (6) and (7) as follows:

“(6) If the offense involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person, increase by 2 levels, but if the resulting offense

level is less than level 18, increase to level 18.

(7) If any person died or sustained bodily injury, increase the offense level according to the seriousness of the injury:

Death or degree of injury	Increase in level
(A) Bodily Injury	add 2 levels.
(B) Serious Bodily Injury	add 4 levels.
(C) Permanent or Life-Threatening Bodily Injury	add 6 levels.
(D) Death	add 10 levels.”;.

and inserting before paragraph (9) (as so redesignated) the following new paragraphs (6), (7), and (8):

“(6) If the offense involved (A) concealing persons in the trunk or engine compartment of a motor vehicle, or (B) carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, increase by [2] levels, but if the resulting offense level is less than level 18, increase to level 18.

(7) If the offense involved conduct (other than conduct for which the defendant received an enhancement under subsection (b)(5) or (b)(6)) that intentionally or recklessly created a substantial risk of death or serious bodily injury (including criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law) to another person, increase by 2 levels, but

if the resulting offense level is less than level 18, increase to level 18.

(8) (A) If any person died, sustained bodily injury (including criminal sexual abuse under 18 U.S.C. 2241 or 2242 or any similar offense under state law)[, or was subjected to conduct constituting criminal sexual contact under 18 U.S.C. 2244], increase the offense level according to the seriousness of the injury:

Death or degree of injury	Increase in level
(i) Bodily Injury [or Criminal Sexual Contact]	add 2 levels.
(ii) Serious Bodily Injury (Including Criminal Sexual Abuse)	add 4 levels.
(iii) Permanent or Life-Threatening Bodily Injury	add 6 levels.
(iv) Death	add 10 levels.

[Option 1 (increase for any additional injuries):

(B) If subsection (b)(8)(A) applies and [the offense resulted in][the defendant intentionally or knowingly caused] death, any degree of injury listed above[, or criminal sexual contact under 18 U.S.C. 2244]—

(i) to one or two additional people, increase by [1] level; or
(ii) to three or more additional people, increase by [2] levels.]

[Option 2 (increase for additional deaths or permanent or life-threatening injuries):

(B) If subsection (b)(8)(A) applies and [the offense resulted in][the defendant

intentionally or knowingly caused] death or permanent or life-threatening bodily injury—

(i) to one or two additional people, increase by [3] levels; or

(ii) to three or more additional people, increase by [6] levels.]”.

Section 2L1.1(c) is amended by inserting at the end the following new paragraph (2):

“(2) If the [offense involved][defendant engaged in] conduct described in 18 U.S.C. 2241–2244, apply the appropriate guideline from Chapter Two, Part A, Subpart 3, if the resulting offense level is greater than that determined under this guideline.”.

The Commentary to § 2L1.1 captioned “Application Notes” is amended—

by striking Notes 3 and 4 as follows:

“3. *Application of Subsection (b)(6).*—Reckless conduct to which the adjustment from subsection (b)(6) applies includes a wide variety of conduct (e.g., transporting persons in the trunk or engine compartment of a motor vehicle; carrying substantially more passengers than the rated capacity of a motor vehicle or vessel; harboring persons in a crowded, dangerous, or inhumane condition; or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements). If subsection (b)(6) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from § 3C1.2 (Reckless Endangerment During Flight). Additionally, do not apply the adjustment in subsection (b)(6) if the only reckless conduct that created a substantial risk of death or serious bodily injury is conduct for which the defendant received an enhancement under subsection (b)(5).

4. *Application of Subsection (b)(7) to Conduct Constituting Criminal Sexual Abuse.*—Consistent with Application Note 1(L) of § 1B1.1 (Application Instructions), ‘serious bodily injury’ is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or § 2242 or any similar offense under state law.”; and inserting the following new Notes 3 and 4:

“3. *Application of Subsection (b)(7).*—

(A) *Reckless Conduct.*—Reckless conduct to which the adjustment from subsection (b)(7) applies includes a wide variety of conduct (e.g., harboring persons in a crowded, dangerous, or inhumane condition; or guiding persons through, or abandoning persons in, a dangerous or remote geographic area without adequate food, water, clothing, or protection from the elements).

(B) *Interaction with Other Guideline Provisions.*—If subsection (b)(7) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from § 3C1.2 (Reckless Endangerment During Flight).

4. *[Application of Subsections (b)(7) and (b)(8) to Conduct Constituting Criminal Sexual Abuse.*—If subsection (b)(8) applies on the basis of conduct constituting criminal sexual abuse under 18 U.S.C. 2241 or § 2242 or any similar offense under state law, then subsection (b)(7) should also apply.]”; and in Note 5 by striking “subsection (b)(8)(A)” and inserting “subsection (b)(9)(A)”.

Issues for Comment:

1. The proposed amendment would amend the table at § 2L1.1(b)(2) providing an enhancement based on the number of unlawful aliens involved in the offense. Is the proposed number of unlawful aliens in each category appropriate given the corresponding offense-level enhancement? Should the Commission revise the number of unlawful aliens for any of the categories? If so, what should the number of unlawful aliens be for each category? Should an enhancement apply to offenses involving fewer than six aliens? If so, what number of aliens should trigger application of the enhancement? Is the proposed level enhancement for each category appropriate? If not, what should each level enhancement be?

2. The proposed amendment brackets the possibility of amending § 2L1.1(b)(8) (as renumbered) to apply a 2-level enhancement to an offense involving criminal sexual contact under 18 U.S.C. 2244. The Commission seeks comment on whether offenses involving criminal sexual contact should receive an enhancement. If so, what level should the enhancement be?

3. The proposed amendment provides two options for adding an enhancement at § 2L1.1(b)(8)(B) (as renumbered) that would apply if there were multiple deaths or injuries. Option 1, which would apply if there were multiple people who sustained an injury of any type covered under the existing table in subsection (b)(8)(A) (as renumbered), would apply a [1]-level enhancement if there were one or two additional injured persons, or a [2]-level enhancement if there were three or more injured persons. Option 2, which would apply if there were multiple people who died or sustained a permanent or life-threatening bodily injury, would apply a [3]-level enhancement if one or two people died or sustained such an injury, or a [6]-level enhancement if three or more people died or sustained such an injury. Both options bracket the possibility of either making the enhancement offense-based or defendant-based. The Commission seeks comment on the following:

(A) Does either of the options appropriately account for offenses resulting in multiple deaths or injuries? Do the enhancements appropriately account for the severity of any additional injuries?

(B) Should the enhancement be either offense-based or defendant-based, or should the Commission consider another approach? If the enhancement is defendant-based, should the Commission include the *mens rea* requirement that the defendant “intentionally or knowingly” caused the injury?

(C) Is there another approach the Commission should consider? For example, should the Commission create an enhancement that treats an offense resulting in multiple injuries of a lesser degree the same as an offense resulting in fewer, but more severe, injuries? If so, how should that enhancement work?

4. The Commission seeks comment on whether it should add—either in addition to or in lieu of the changes in the proposed amendment—a specific offense characteristic to § 2L1.1 to further address the risks associated with human smuggling offenses committed by members of transnational criminal organizations. For example, should the Commission add a specific offense characteristic providing an enhancement if the defendant “committed the offense in connection with the defendant’s participation in an organization, knowing [or with reckless disregard of the fact] that the organization was a transnational criminal organization (as defined in 21 U.S.C. 2341(5))”? The Commission seeks comment on the following:

(A) Should the Commission add a specific offense characteristic to § 2L1.1 addressing transnational criminal organizations, such as the language proposed above? If so, at what level should the Commission set the enhancement?

(B) The proposed language above would apply to offenses involving a “transnational criminal organization,” as defined in 21 U.S.C. 2341(5). That statutory definition comprises three subsections, each describing a type of criminal organization. Is this an appropriate definition for purposes of the proposed enhancement? If so, should the Commission use the full statutory definition, or should the Commission use only part of the statutory definition? Should the Commission use a different definition? If so, what definition should the Commission use? Alternatively, should the Commission limit application of the enhancement to specifically enumerated criminal organizations, such as those

listed in 21 U.S.C. 2341(5)(B) or a list of organizations specifically identified by the Commission?

(C) The proposed language above would apply to a defendant who participates in a transnational criminal organization. Should the Commission limit application of the enhancement to a defendant who receives an adjustment under § 3B1.1 (Aggravating Role), or who holds a leadership or organizing role (or some other role) within a transnational criminal organization?

(D) The proposed language would include a requirement that the defendant participated in an organization “knowing [or with reckless disregard of the fact]” that the organization was a transnational criminal organization. Is this *mens rea* requirement appropriate, or should the Commission revise or remove the requirement?

(E) If the Commission were to promulgate a new specific offense characteristic related to transnational criminal organizations, could it result in unwarranted sentencing disparities? If so, how should the Commission address those disparities?

5. Are there any other aggravating or mitigating circumstances in cases sentenced under § 2L1.1 that the Commission should address? If so, what are those circumstances, and how might the Commission account for them?

[FR Doc. 2026–02441 Filed 2–5–26; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA–2026–VACO–0001]

Implementation of Section 402 of Title IV (HOME Act of 2024) of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notification of subregulatory guidance.

SUMMARY: This notice informs the public of the VA’s implementation of Title IV, Section 402 of the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act, which increased the maximum per diem rate from 115 percent to 133 percent of the State Home domiciliary care rate beginning on the date of the enactment of the HOME Act of 2024 and ending on September 30, 2027.

DATES: This guidance is effective on February 6, 2026.

FOR FURTHER INFORMATION CONTACT: Chelsea Watson, Grant and Per Diem Program, Veterans Health Administration. GPDGrants@va.gov; (202) 461–0056.

SUPPLEMENTARY INFORMATION: On January 2, 2025, the President signed into law the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (the Act; Public Law 118–210). Section 402 of the Act amended 38 U.S.C. 2012(a)(2)(B)(i)(II)(aa)(BB) and increased the maximum per diem rate from 115 percent to 133 percent of the State Home domiciliary care rate beginning on the date of the enactment of the HOME Act of 2024 (title IV of Public Law 118–210) and ending on September 30, 2027. Section 402 also amended 38 U.S.C. 2012(a)(2)(B)(iii) to allow VA, for each of fiscal years (FY) 2025–2027, to waive the maximum rate for per diem payments to provide payments at a rate that does not exceed 200% of the rate authorized for State homes for domiciliary care under 38 U.S.C. 1741(a)(1)(A) for no more than 50% of all grant recipients and eligible entities for a FY, subject to the availability of funding. VA must also notify Congress of the waiver. In addition, section 402 stipulates that VA may not provide more than 12,000 per diem payments under this section for a fiscal year. As of October 1, 2025, VA implemented the provision of the Act allowing for increased per diem payments up to 133 percent of the State Home domiciliary care rate. This notice informs the public of VA’s approach to implementing the provision that allows VA to waive the maximum rate for per diem and, subject to the availability of appropriations, provide such payments at a rate that does not exceed 200 percent of the rate authorized for State homes for domiciliary care under 38 U.S.C. 1741(a)(1)(A), if VA notifies Congress of such waiver.

This notice provides information on how VA will implement section 402 of the Act and is not a solicitation for public comment or a request for information regarding VA’s implementation of section 402 of the Act. Therefore, responses to this notice may not be used to inform VA’s implementation of section 402 of the Act, and VA will not address such responses.

VA has found that in certain time-limited circumstances, increased per diem payments help sustain GPD grantee operations and service delivery for Veterans experiencing or at risk of experiencing homelessness. GPD remains VA’s most enduring and cost-

effective transitional, supportive housing program with demonstrable success in achieving permanent housing placements for Veterans.

Examples of circumstances for time-limited per diem increases include:

a. Relocating Veterans in grantee-furnished housing due to natural disasters, fires, or other urgent instances.

b. Maintaining grantee-furnished housing in areas with limited housing and/or high costs to operate transitional housing.

c. Addressing fluctuations in operating costs due to variations in demand stemming from seasonal changes or the changing availability of other community housing resources.

d. Managing variations in the availability of funding from collaborative sources, such as other Federal, state, or local grants, or private donations.

e. Providing individual or less congregate living spaces for Veterans to accommodate various programmatic needs (e.g., Veterans with custody of minor dependents, support for physical and/or mental health needs).

f. Enhancing staffing resources to facilitate same-day access, increased outreach within the community, and/or address emerging needs of Veterans, such as those who are older or disabled.

In these examples, GPD grantees may incur significant costs, which impact their ability to remain financially solvent and potentially jeopardize GPD-furnished services to Veterans. Although the State Home rate inherently adjusts annually to roughly align with inflationary pressures, these examples of increased costs represent instances where annual adjustments may not suffice to preserve continuity of services to homeless Veterans.

An initial application period of 30 days will be open to allow any interested and eligible grantee to request a waiver of the maximum rate for per diem payments under the criteria outlined in this notice. VA will select grantees starting with the highest-ranking requests and continuing in order until available funding is exhausted or until 50 percent of the currently eligible grant awards are selected for a waiver, whichever comes first. As noted above, under the amendments made by section 402, VA may not waive the maximum rate for more than 50 percent of all grant recipients and eligible entities for a fiscal year. If more than 50 percent of all grantees request a per diem rate waiver, VA will evaluate the requests as described below. If fewer than 50 percent of all grantees request a per

diem rate waiver, VA will select all eligible grantees, subject to the availability of funding and the grantees' ability to demonstrate allowable, allocable, and reasonable costs warrant the waiver. All requests for a waiver will be accepted through the normal per diem rate request process as detailed on the GPD website: https://www.va.gov/HOMELESS/GPD_Provider_website.asp#rate.

VA will consider five factors when deciding which current grantees, per Federal Award Identification Number (FAIN), will be granted a waiver. VA will also establish procedures to evaluate financial accountability to ensure that funds are used appropriately and effectively.

Five Criteria Establishing if a Current Grantee Is Eligible To Request a Temporary Per Diem Rate Waiver

To determine if a grantee is eligible to request a temporary per diem rate waiver, VA will establish that the grantee is in good standing. Grantees not meeting the criteria outlined below will be disqualified from consideration for a per diem rate waiver:

- a. The requester is a current GPD grantee with an active grant award/FAIN authorized by 38 U.S.C. 2011, 2012;
- b. The per diem budget request demonstrates sufficient allocable costs allowed under these awards to prevent overdrawn funds, which could result in unobligated funds and debt to VA;
- c. The waiver request certifies compliance with Federal cost principles outlined in 2 CFR part 200, known as the Uniform Guidance [*e.g.*, allowable (2 CFR 200.403), reasonable (2 CFR 200.404), and allocable (2 CFR 200.405) costs], requirements in part 61 of title 38 CFR, all applicable statutes and regulations, and the terms of the grant agreement. (By regulation, the rate of per diem for each Veteran in supportive housing will be the lesser of 100% of the estimated cost of care, minus other sources of income, or the current State Home rate (38 CFR 61.33(c)(1)).);
- d. The requesting grantee has certified their commitment to maintaining records that accurately identify the amount, source, and expenditure of funds by Federal award, as well as track unobligated balances. (Per diem rates must be reviewed at least monthly to prevent the accrual of excessive unobligated balances. If necessary, the grantee will take immediate corrective action to adjust the per diem rate.); and
- e. The grantee does not have an outstanding obligation to VA that is in arrears or an overdue or unsatisfactory response to an audit.

Need-Impact Ranking Calculation for Grantees Determined Eligible To Request a Temporary Per Diem Rate

If a requesting grantee meets the above five criteria, the following two areas (need and impact) will be used to evaluate the merit of the request:

a. **Need:** GPD grantees must demonstrate a need for the increased per diem funding through the submission of a per diem rate budget request. In addition to outlining the allocable, allowable, and reasonable costs factored into their budget, grantees are instructed to provide a brief narrative describing how the funding received, if approved for the per diem rate waiver, will primarily be directed towards supporting direct services to Veterans. To calculate need, VA will weigh the difference between the per diem rate requested under the Act and the normal maximum per diem rate, *i.e.*, 133 percent for Per Diem Only (PDO) grantees currently under the Act, and 150 percent for Transition in Place (TIP) grantees by statute. Applicants who have demonstrated a greater need for a higher per diem rate will have a higher need multiplier as part of the need-impact ranking discussion below.

b. **Impact:** VA will evaluate the impact of increased per diem funding. Established grantees with grant/FAINs that are larger in scope (*i.e.*, have a greater number of GPD-funded beds available to Veterans) and demonstrate consistently high occupancy rates under their current FAIN will be determined to have greater impact in the community and have served a greater number of Veterans. VA will base impact assessment on the average number of occupied beds for the two months preceding the waiver request submission. For new grantees without historical occupancy data, VA will assume a 70 percent occupancy rate. VA is using the 70 percent occupancy rate as a baseline measure for impact assessment in the absence of historical data and demonstrates a reasonable program utilization rate for the first year of operation.

VA will determine the need-impact ranking for each waiver request by assigning a numerical score to both the "need" and "impact" criteria. VA will then multiply these two scores to produce a final score for each request. VA will then rank requests from highest to lowest based on these final scores. VA will select the highest-ranking requests until the available funding is exhausted or until 50 percent of the eligible grant awards have been granted a waiver, whichever comes first.

Example 1: Grantee A is a PDO grantee with a current maximum per diem rate of \$82.73, which is 133% of the State Home domiciliary care rate. Grantee A is authorized to provide up to 20 beds, but their average number of occupied beds for the two months preceding the waiver request submission was 18 beds. They requested a waiver and submitted a properly completed per diem rate budget request for \$124.40. Grantee A meets the five eligibility criteria. The need-impact calculation is \$41.67 ($\$124.40 - \$82.73$) $\times$ 18 beds = 750.06 need impact ranking score.

Example 2: Grantee B is a PDO grantee with a current maximum per diem rate of \$82.73, which is 133% of the State Home domiciliary care rate. Grantee B is authorized to provide up to 50 beds, but their average number of occupied beds for the two months preceding the waiver request submission was 39 beds. They requested a waiver and submitted a properly completed per diem rate budget request for \$101.00. Grantee B meets the five eligibility criteria. The need-impact calculation is \$18.27 ($\$101.00 - \$82.73$) $\times$ 39 beds = 712.53 need impact ranking score.

Based on the examples above, Grantee A would be ranked higher and selected for a per diem rate waiver before Grantee B. VA will utilize this ranking process to select eligible grantees for the per diem rate waiver.

VA retains discretion to award additional per diem rate waivers after the period for the initial solicitation of waiver requests ends. If a per diem rate waiver is awarded and then rescinded, or if VA does not receive applications from up to 50 percent of eligible grantees, VA will consider additional applications for the waiver, on a case-by-case basis, until VA has reached the 50 percent cap of eligible grantees or until funds are no longer available.

VA's decisions regarding per diem rate waivers are final. VA reserves the right to modify or rescind per diem rate waiver increases at its discretion for any reason; as noted above, if VA rescinds a waiver, it will not consider this waiver as counting against the 50 percent cap established by law. Per diem rate waivers will only be provided if funding is sufficient. As noted above, section 402 provides that VA may waive the maximum rate for per diem payments and, subject to the availability of appropriations, provide payments at a rate that does not exceed 200 percent of the rate authorized for State homes for domiciliary care. However, the actual increased per diem payment rate made available to eligible grantees who are

selected for a waiver will be based on the grantee’s need, impact, and actual costs.

VA is not yet exercising its authority to establish through regulation other matters that VA may consider in exceeding its established per diem rate. Should VA do so in the future, it will do so through rulemaking consistent

with the Administrative Procedure Act (5 U.S.C. 553).

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on February 2, 2026 and authorized the undersigned to sign and submit the document to the Office of the

Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Gabriela DeCuir,
Alternate Federal Register Liaison Officer,
Department of Veterans Affairs.
[FR Doc. 2026–02341 Filed 2–5–26; 8:45 am]
BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 91

Friday,

No. 25

February 6, 2026

Part II

Office of Personnel Management

5 CFR Parts 210, 212, 213, et al.

Improving Performance, Accountability and Responsiveness in the Civil Service; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Parts 210, 212, 213, 302, 432,
451, 537, 575, and 752**

[Docket ID: OPM–2025–0004]

RIN 3206–AO80

Improving Performance, Accountability and Responsiveness in the Civil Service

AGENCY: Office of Personnel
Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a rule to increase career employee accountability. Agency supervisors report great difficulty removing employees for poor performance or misconduct. The final rule authorizes agencies to move policy-influencing positions into Schedule Policy/Career. These positions will remain career jobs filled on a nonpartisan basis. Yet they will be at-will positions excepted from adverse action procedures or appeals. This will allow agencies to quickly remove employees from critical positions who engage in misconduct, perform poorly, or obstruct the democratic process by intentionally subverting Presidential directives. The rule requires agencies to establish internal policies protecting employees from prohibited personnel practices.

DATES: Effective March 9, 2026.

FOR FURTHER INFORMATION CONTACT:
Noah Peters, Senior Advisor to the
Director, by email at
employeeaccountability@opm.gov or by
phone at (202) 606–293.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

OPM is issuing final regulations to strengthen employee accountability and the democratic responsiveness of American Government, while addressing longstanding performance management challenges in the Federal workforce. The final rule amends OPM's regulations in 5 CFR chapter I, subchapter B, as follows:

1. Amending 5 CFR part 213 (Excepted Service) to include Schedule Policy/Career as an excepted service schedule for career positions of a confidential, policy-determining, policy-making, or policy-advocating character (policy-influencing¹

positions), while clarifying that Schedule C appointments are exclusively for noncareer (*i.e.*, political) appointments with confidential or policy responsibilities. The amended regulations further clarify that employees filling excepted service positions are in the excepted service, regardless of whether they retain competitive status, and specifies increasing accountability to the President as grounds for excepting positions from the competitive service.

2. Amending 5 CFR part 212 (Competitive Service and Competitive Status) to provide that employees with competitive status whose positions are subsequently listed in the excepted service or who are moved into an excepted service position retain competitive status but do not remain in the competitive service while in the excepted position.

3. Amending 5 CFR part 752 (Adverse Actions) to remove the amendments made by the April 2024 final rule and provide that individuals whose positions are reclassified into or who are otherwise transferred into Schedule Policy/Career are not covered by chapter 75 procedural requirements or adverse action appeals. Additionally, OPM amends 5 CFR part 752 to remove language pertaining to 10 U.S.C. 1599e, which provided for a 2-year probationary period in the Department of Defense. This language has become obsolete as section 1599e was repealed, effective December 31, 2022, by Public Law 117–81, Sec. 1106(a)(1). The rule further amends 5 CFR part 432 (Performance Based Reduction in Grade and Removal Actions) to remove the amendments made by the April 2024 final rule and to exclude all policy-influencing positions in the excepted service from chapter 43 procedural requirements for performance-based removals.

4. Amending 5 CFR part 210 (Basic Concepts and Definitions (General)) to remove the amendments made by the April 2024 final rule stating that policy-influencing positions are exclusively associated with noncareer political appointments. The final rule also amends 5 CFR 213.3301, 302.101, and 451.302 to conform to the rescission of these definitions.

5. Amending 5 CFR part 302 to remove the amendments made by the April 2024 final rule imposing procedural requirements on movements of positions or employees into policy-influencing excepted service positions (including subsequent Merit Systems Protection Board (MSPB) appeals). The final rule also provides that moving or transferring positions into Schedule

Policy/Career will not change how appointments to those positions are made. Positions moved from the competitive service will be filled using competitive hiring procedures and employees so appointed may acquire competitive status. Positions moved from the excepted service will continue to be filled using the procedures that applied to their prior excepted service schedule.

6. Amending 5 CFR part 537 to allow employees reassigned to positions in Schedule Policy/Career to continue to receive student loan repayment benefits under the terms of the applicable service agreement unless eligibility is lost as described in 5 CFR 537.108.

7. Amending 5 CFR part 575 at subparts A, B, and C to allow agencies to continue paying any outstanding recruitment, relocation, or retention incentive under the terms of existing agreements for positions moved into Schedule Policy/Career provided the employees are otherwise fulfilling the terms of their service agreements. This final rule also permits agencies to continue paying a retention incentive to an employee who is not under a service agreement at the time when their position is moved into Schedule Policy/Career.

As further detailed below, this rulemaking will promote Federal employee accountability and strengthen American democracy while addressing performance management challenges and issues with misconduct within the Federal workforce. It will give agencies the practical ability to separate employees who insert partisanship into their official duties, engage in corruption, or otherwise fail to uphold merit principles. OPM may set forth policies, procedures, standards, and supplementary guidance for the implementation of this final rule.

II. Digest of Public Comments

In response to the proposed rule, OPM received 40,500 comments during the 45-day public comment period from a variety of individuals (including current and former civil servants, scientists, Nobel laureates, and members of Congress) and organizations such as those representing science and technology, national and local unions, and Federal agencies. Of the 40,500 comments received, 35,551 were posted, 2 were withdrawn, and 7 were not posted because they contained threats to the President and members of the Administration or contained sensitive personally identifiable information from commenters. The remaining 4,940 comments are attributed to individual commenters who indicated on their

¹ Throughout this rulemaking OPM uses the term “policy-influencing” as a shorthand descriptor of the broader statutory language “confidential, policy-determining, policy-making, or policy-advocating.” See 5 U.S.C. 7511(b)(2).

comment submission that their comment represented a specific number of submissions. For example, one commenter stated that he and 7 other people were part of a group of former Environmental Protection Agency employees submitting a comment on behalf of all 8 people. In another example, a commenter indicated that they are part of 2 organizations, the Union League Club of Chicago and the League of Women Voters of Chicago, and their comment represents 3,200 submissions. At the conclusion of the public comment period, OPM reviewed and analyzed the comments. In general, the comments ranged from ardent support of the proposed regulation to categorical rejection of it. Approximately 5 percent of the overall comments were supportive, 1 percent neutral or mixed, and 94 percent opposed the proposed regulation.

In the proposed rule, OPM invited comments on whether it is appropriate to retain certain amendments to parts 302 and 752, as well as input on the costs and benefits of this rule. OPM received a wide variety of comments in response to the proposed rule and incorporated them into the relevant sections that follow. OPM found the comments helpful when explaining the purpose, scope, and impact on the Federal workforce in drafting this final rule.

In the next section, we address the background for these regulatory amendments and related comments. In subsequent sections, we address the specific amendments, provide a regulatory analysis, and provide the amended regulatory text. Note that OPM received several comments that are not addressed below because they were beyond the scope of the proposed regulatory changes or else were vague or incomplete.

III. Background and Related Comments

A. History of the Civil Service and Removal Restrictions

Critical to the success of any presidency is the ability to implement an agenda endorsed by the American people free from antidemocratic, unaccountable bureaucratic resistance. “The Constitution requires that a President chosen by the entire Nation oversee the execution of the laws.”² In order to execute his Article II duty to ensure that the laws are faithfully executed, the vast expansion in the scope and complexity of Federal law has required the President to delegate such authority to thousands of career

civil servants involved in policy formulation. Because in practice such delegation involves hundreds of thousands of distinct statutory provisions, it is extraordinarily difficult for the President—or agency heads appointed by the President and confirmed by the Senate—to ensure that all such delegations are being executed consistent with the priorities of the President. It is therefore critical to create an incentive architecture that will encourage and reward accurate translation of such priorities.³

As explained in greater detail in the proposed rule, however, the Federal service has matured to a point where the status quo removal restrictions for policy-influencing positions have become harmful overcorrections to fears of a return to the spoils system of the past. Instead of protecting merit, these removal restrictions too often undermine democratic accountability, entrench bureaucratic policy-resistance, and frustrate the President’s constitutional ability to faithfully execute the law. As James Madison observed during the First Congress, “if any power whatsoever is in its nature Executive, it is the power of appointing, overseeing, and controlling those who execute the laws.”⁴

From the beginning of the earliest days of the American republic, the appointment and removal of Federal officers flowed from the authority vested in the President under Article II of the Constitution. However, over the course of the Nineteenth Century, presidents began to lose control of the appointment and removal process due to the rise of the patronage system. By the 1880s, appointments to positions in the executive branch were predominantly made based on political connections, typically as a reward for loyal supporters of the party in power. Members of Congress and local party machines would use their influence with the President to get their preferred candidates Federal appointments. The patronage system began showing strain as the Federal Government expanded rapidly after the Civil War. The Federal civilian workforce nearly doubled in size between 1871 and 1881, from 51,000 to 100,000 employees.⁵

³ See *id.* at 498 (“the Framers sought to ensure that ‘those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community.’”) (quoting 1 *Annals of Cong.*, at 499 (J. Madison)).

⁴ *Id.* at 492 (quoting 1 *Annals of Cong.* 463 (1789)).

⁵ Ronald N. Johnson and Gary D. Libecap, *The Federal Civil Service and the Problem of*

Congress responded when it passed the Pendleton Civil Service Act of 1883 (Pendleton Act) to begin the shift to a merit system by requiring competitive examinations for covered positions and insulating those jobs from purely political patronage. The Pendleton Act also established the Civil Service Commission (CSC) to help implement and enforce its requirements. While the Pendleton Act professionalized hiring, early statutes and practice still left wide managerial latitude over removals. The Pendleton Act also prohibited executive branch officials from dismissing classified employees because they declined to render political services, but otherwise such officials served at the pleasure of the President. Classified employees’ status under the Pendleton Act was similar to most private sector workers today. Businesses today cannot fire workers for certain discriminatory reasons, such as race or religion, but employees otherwise serve at the pleasure of their employer. Civil service employees also had no right to appeal or otherwise contest removals. Instead, the Pendleton Act was enforced through penalties on officials who violated its requirements. The reformers who created the Pendleton Act made a conscious decision to keep the civil service at-will. They saw little risk of patronage-based dismissals as long as civil service hiring forbade rewarding campaign supporters with new appointments.⁶

In 1912, Congress passed the Lloyd-La Follette Act of 1912.⁷ Among its provisions, the Lloyd-La Follette Act provided that employees in the classified service (now known as the competitive service) could only be removed “for such cause as will promote the efficiency of [the] service”, and must be given written notice of the reasons for their proposed dismissal and an opportunity to respond.⁸ Among its provisions, the Lloyd-La Follette Act further mandated that “no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal.”⁹ The next year the CSC explained its policy governing civil service dismissals, delimiting the ability of agencies to remove employees as freely as possible with only the limits

Bureaucracy: The Economics and Politics of Institutional Change, 17 (University of Chicago Press, 1994), <https://www.nber.org/system/files/chapters/c8633/c8633.pdf> (Johnson & Libecap).

⁶ See P.P. Van Riper, *History of the United States Civil Service*, 101–03 (Row, Peterson & Co. 1958) (Van Riper).

⁷ 37 Stat. 555 (1912).

⁸ *Id.*

⁹ *Id.*

² *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010).

necessary to ensure the proper exercise of this authority.¹⁰ The Lloyd-La Follette Act's policy, according to the CSC, was intended to "prevent removals upon secret charges and to stop political pressure for removals."¹¹ The Lloyd-La Follette Act and its predecessor executive orders did not give classified civil service employees tenure or the ability to appeal removals. They instead imposed procedural requirements to ensure dismissals were not pretextual and to prevent political or religiously motivated removals. Agencies remained the sole judge of employee conduct and performance.

For the first six decades of the merit service, employees could not appeal removals. That only began to change during the Second World War. The Veterans Preference Act (VPA) of 1944 gave veterans significant hiring preferences for Federal jobs.¹² It also provided that veterans—including those in the excepted service—could be dismissed only to promote the efficiency of the service, and it allowed veterans to appeal adverse actions to the CSC.¹³ In 1948, Congress amended the law to make the outcomes of CSC appeals binding on agencies.¹⁴ These amendments gave preference-eligible veterans the ability to appeal removals outside their agency.

Until the 1950s, courts would entertain procedural challenges to civil service removals, overturning them where agencies did not follow Lloyd-La Follette procedures. But courts generally avoided examining the substance of removal actions.¹⁵ A significant precedent was established in 1954 when the D.C. Circuit Court of Appeals decided *Roth v. Brownell*.¹⁶ As noted in the decision, the Lloyd-La Follette Act provided that "[n]o person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service and for reasons given in writing."¹⁷ The D.C. Circuit construed this language to require agencies to follow Lloyd-La Follette procedures to take employees out of the competitive

service—whether through a discharge or through moving the position into the excepted service.¹⁸ The D.C. Circuit subsequently clarified that agencies could dismiss employees from confidential or policy-making positions based purely on loss of confidence. In *Leonard v. Douglas*, the D.C. Circuit concluded that removing an employee from a policy-making position because his superiors did not find him suitable to advance their policies promoted "the efficiency of the service" and was therefore lawful.¹⁹ Consequently, while the Lloyd-La Follette Act and VPA imposed procedural requirements on removals, agencies generally retained broad authority to dismiss employees for non-discriminatory reasons. Those reasons included removing employees from policy-influencing positions based purely on the belief they would not effectively advance the President's policies.

In the years leading up to the establishment of the current civil service system, the Supreme Court ruled in *Arnett v. Kennedy* that a Federal employee has a constitutional due process interest in continued Federal employment. *Arnett* made constitutional due process challenges generally applicable to civil service removals, not just when employees were fired for exercising constitutional rights.²⁰

Congress legislated against this backdrop when it passed the Civil Service Reform Act of 1978 (CSRA).²¹ The CSRA replaced the Lloyd-La Follette Act, VPA, executive orders, and private rights of action in Federal court with a new unified framework governing adverse actions and subsequent appeals.²² The CSRA maintained prohibitions on patronage and restricted agencies' ability to take adverse actions in some respects. For example, the CSRA gave non-preference eligible employees in the competitive service the same right to appeal long-term suspensions and demotions that preference eligible employees possessed.²³ The CSRA also expanded preference-eligible employees' ability to appeal suspensions by authorizing appeals of suspensions of more than 14 days, rather than those exceeding 30 days.²⁴

In other ways, the CSRA made taking adverse actions easier. It prevented Federal employees from directly challenging removals in Federal district court. The CSRA instead channeled adverse action appeals to the MSPB²⁵ and subsequent legislation vested judicial review in the Federal Circuit Court of Appeals.²⁶ The CSRA also repealed Lloyd-La Follette provisions governing removal from the competitive service, replacing it with a new unified framework of adverse action appeals for both competitive service employees and excepted service preference-eligibles. Notably, the CSRA thus removed from Federal law the language the D.C. Circuit interpreted in *Roth*. The CSRA also categorically excluded excepted service employees in policy-influencing positions from adverse action procedures.²⁷

In an important decision after the enactment of the CSRA, the Supreme Court held in *United States v. Fausto* that employees statutorily excluded from chapter 75 could not contest removals in Federal district court.²⁸ The Court explained that the CSRA created a comprehensive review system for adverse actions; exclusion from CSRA coverage meant employees could not appeal adverse actions elsewhere.²⁹ Shortly thereafter, Congress passed the Civil Service Due Process Amendments Act of 1990 (DPAA).³⁰ This law, which remains in effect, amended the CSRA by extending chapter 75 to generally cover excepted service employees—preference eligible or not—after an initial trial period.³¹ At the same time, Congress retained the exclusion from chapter 75 procedures for excepted service employees in policy-influencing positions.³²

A large number of commenters argued that classifying career positions as policy-influencing and exempt from adverse action procedures violates the Pendleton Act, the Lloyd-La Follette Act and/or the CSRA. These arguments misunderstand the law.

²⁵ See 5 U.S.C. 7701; Public Law 95–454, 92 Stat. 1111 (1978).

²⁶ See 5 U.S.C. 7703(b)(1)(A); Public Law 97–164, 96 Stat. 25 (1982).

²⁷ 5 U.S.C. 7511(b)(2).

²⁸ 484 U.S. 439, 454–55 (1988) (*Fausto*). Commenter 34947 asserts the proposed rule misreads *Fausto* as applying to constitutional claims when it only addresses statutory claims. However, the proposed rule did no such thing. See 90 FR 17186 & 17217 (citing to *Fausto* for the proposition that Federal employees cannot contest removals in district court because the CSRA is the exclusive remedial statutory framework for adverse action appeals and judicial review).

²⁹ *Fausto*, 484 U.S. at 455.

³⁰ Public Law 101–376, 104 Stat. 461 (1990).

³¹ *Id.*

³² 5 U.S.C. 7511(b)(2).

¹⁰ U.S. Civil Service Commission, Twenty-Ninth Annual Report, 21–22 (1913).

¹¹ *Id.* at 22.

¹² Public Law 78–359, 58 Stat. 387 (1944).

¹³ *Id.* at 390.

¹⁴ Public Law 80–741, 62 Stat. 575 (1948).

¹⁵ See Gerald E. Frug, "Does the Constitution Prevent the Discharge of Civil Service Employees," 124 U. Pa. L. Rev. 942, 970, n.134, (1976) (*Frug*). https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4997&context=penn_law_review.

¹⁶ 215 F.2d 500 (D.C. Cir. 1954) (*Roth*), cert. denied, 348 U.S. 863 (1954).

¹⁷ *Id.* at 501 (quoting 37 Stat. 555 (1912), as amended, 62 Stat. 354 (1948)).

¹⁸ *Id.* at 502.

¹⁹ 321 F.2d 749, 751–53 (D.C. Cir. 1963).

²⁰ 416 U.S. 134, 163 (1974).

²¹ Public Law 95–454, 92 Stat. 1111 (1978).

²² *Id.*

²³ Compare 5 U.S.C. 7511 (1978) with 80 Stat. 528, Public Law 89–554 (1966).

²⁴ Compare 5 U.S.C. 7512 with 80 Stat. 528, Public Law 89–544 (1966).

The Pendleton Act did not provide tenure protection for Federal employees. The proponents of the Act were primarily concerned with establishing merit as the basis for civil service appointments. The most significant aspect of the Pendleton Act was to provide for examinations (*i.e.*, tests) for Federal employment. The idea was that people who did very well on these tests would likely make the most competent employees.

Tenure protection for Federal employees, especially for non-veterans, is a relatively recent phenomenon that had no place under the Pendleton Act. As discussed above, the Lloyd-La Follette Act did not require external review of adverse actions, and it expressly provided that trial-like proceedings were not required to effectuate dismissals.

It was not until 1944 that the VPA provided any type of third-party review of adverse actions, and only for veterans. Although the Congressional record on this provision is sparse, it appears to have been motivated by concerns that agencies would formally honor veteran preference in hiring only to pretextually dismiss veterans after the fact.³³ It was not until the 1970s that full third-party review by the CSC was afforded to non-veteran employees facing adverse actions. Until then employees without veteran preference had no right to appeal their removal outside their agency. A number of commenters have mischaracterized the Pendleton Act as standing for something it never addressed—due process. The Pendleton Act, as innovative as it was, was concerned *only* with merit-based hiring, *i.e.*, examining potential candidates for Federal employment on the basis of objective examinations instead of patronage appointments. Attempts to characterize the Pendleton Act as encompassing notions of procedural rights introduced only in the late 20th century thus are historically inaccurate. Instead, the current system with multiple avenues of appeal for employees seeking to challenge adverse actions involving substandard or lackluster performance as well as overt misconduct only arose in the 1970s.

Furthermore, nothing in this final rule interferes with merit as a basis for appointment into the competitive service nor as a basis for appointment

into Schedule Policy/Career. Appointments to Schedule Policy/Career positions that were previously in the competitive service will continue to be made using merit-based competitive hiring procedures. In addition, the CSRA, which subsequently replaced some provisions of the Pendleton Act, includes specific language exempting from the procedural protections associated with the competitive civil service those positions that are of a policy-influencing character.³⁴ This rule will principally affect removal procedures for employees in policy-influencing positions whose performance or conduct is judged to be deficient. The vast majority of those appointed under Schedule Policy/Career will thus experience no change in their employment characteristics or conditions and retain protections against prohibited personnel practices including retaliation against whistleblowing (PPPs).

Many commenters also asserted that Schedule Policy/Career dismissal procedures violate the Lloyd-La Follette Act, requiring certain procedural notice before removal of an employee can be effected. Although the Lloyd-La Follette Act was superseded by the CSRA, the CSRA contains procedural requirements applying to adverse actions and generally provides for appeals of adverse actions, including dismissals, to the MSPB. In a similar fashion, the DPAA extended the rights of non-preference eligibles to receive pre-termination notice and also to appeal adverse decisions to the MSPB. As highlighted in the preamble to the proposed rule, both the CSRA and the DPAA authorize OPM and the President to exempt employees in policy-influencing positions from access to chapter 75 adverse action procedures and appeals. Thus, this rule maintains harmony with both the CSRA and the DPAA, as it utilizes a longstanding express statutory exemption.

B. Executive Orders 13957, 14003, 14171, and the Prior OPM Rulemaking

President Donald Trump issued Executive Order (E.O.) 13957 creating “Schedule F” in October 2020. As previously discussed, chapter 75 adverse action procedures do not cover employees in excepted service positions that the President, OPM, or an agency head, as applicable, have determined are policy-influencing.³⁵ Prior administrations had applied this exemption only to political appointments, principally positions in

Schedule C of the excepted service.³⁶ E.O. 13957 created a new Schedule F (following the pre-existing schedules A through E) for career employees in policy-influencing positions.³⁷

Schedule F applied to policy-influencing positions “not normally subject to change as a result of a Presidential transition.”³⁸ E.O. 13957 established a process for agencies to review their workforce, identify such policy-influencing career positions, and ask OPM to move them into Schedule F.³⁹ The order provided guideposts for that analysis, identifying positions such as regulation writers or officials in agency policy offices as likely belonging in Schedule F.⁴⁰ Under 5 U.S.C. 7511(b)(2), any career positions moved into Schedule F would be excluded from chapter 75 adverse action procedures and, consequently, MSPB appeal rights.

At the same time, Schedule F positions remained career jobs filled based on merit, not political connections. Any position filled with the involvement of the White House Office of Presidential Personnel could not be placed into Schedule F.⁴¹ E.O. 13957 also prohibited hiring or firing Schedule F employees based on their political affiliation or for other discriminatory reasons or retaliation against whistleblowers. It further required agencies to establish internal procedures to ensure compliance with this non-discrimination directive.⁴² E.O. 13957 put policy-influencing career Federal employees in the same position as most private sector workers, generally serving at-will but protected from discriminatory removals.

The Order explained that these changes were necessary to enable agencies to more effectively address poor performance. It cited findings from the MSPB’s Merit Principles Survey that less than a quarter of Federal employees believe their agency addresses poor performers effectively. E.O. 13957 explained that poor performance in policy-influencing positions is especially problematic, as it can affect the performance of the entire agency.⁴³ E.O. 13957 also explained that competitive hiring procedures do not provide enough flexibility to select applicants with the necessary intangible qualities for these important positions,

³⁶ 5 CFR 6.2 (2024).

³⁷ E.O. 13957, 85 FR 67631, 67633 (Oct. 26, 2020).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 67633–67634.

⁴¹ *Id.* at 67632.

⁴² *Id.* at 67634.

⁴³ *Id.* at 67631–32.

³³ See Frug, 124 U. Pa. L. Rev. at 959–60; see also S. Rep. No. 78–907, at 2 (1944). “The committee recognizes the necessity of assuring that those who have left civil employment to serve in the armed forces during this war shall not, upon their return, be penalized by displacement or loss of opportunity due to the presence of wartime emergency employees.”

³⁴ 5 U.S.C. 7511(b)(2).

³⁵ 5 U.S.C. 7511(b)(2).

such as sound judgment, acumen, or impartiality.⁴⁴

Schedule F also came in the context of widespread reports of career staff resistance to Trump Administration policies.⁴⁵ While Schedule F employees would not be dismissed based on their personal beliefs, agencies could swiftly dismiss any who did not perform their duties in a nonpartisan manner. However, no agencies moved positions into Schedule F before President Trump left office.⁴⁶

Shortly after taking office, President Biden issued E.O. 14003 revoking E.O. 13957 and abolishing Schedule F.⁴⁷ E.O. 14003 described Schedule F as “undermin[ing] the foundations of the civil service and its merit system principles, which were essential to the [Pendleton Act’s] repudiation of the spoils system,” and asserted that the repeal of E.O. 13957, among other executive orders, was necessary to “rebuild the career Federal workforce.”⁴⁸

E.O. 14003’s reasoning ignored the fact that Schedule F gave employees stronger removal protections than the Pendleton Act did. The Pendleton Act merely prohibited hiring or dismissing classified employees based on their politics or failure to make political contributions. Section 6 of E.O. 13957 forbids taking any personnel actions prohibited by 5 U.S.C. 2302(b),⁴⁹ which includes actions based on protected characteristics (such as race, sex, or religion), political affiliation, or retaliation against whistleblowers.⁵⁰ Section 6 further directs agencies to incorporate these prohibitions into their internal policies.⁵¹ E.O. 14003 also ignored the fact that the Federal Employee Viewpoint Survey (FEVS) showed career Federal employee job satisfaction rising throughout the first Trump Administration, reaching a record high of 72 percent in 2020.⁵²

Commenter 11329 noted that the FEVS showed that employee job satisfaction was higher with their direct supervisor than senior leadership.⁵³ However, this does not rebut the fact that the FEVS demonstrated that overall job satisfaction reached 72 percent in 2020, the highest level FEVS ever recorded. Based on their survey responses, Federal employees did not feel their workforces needed rebuilding.⁵⁴

During the Biden Administration, OPM proposed, and in April 2024 finalized, new regulations related to E.O. 14003.⁵⁵ The April 2024 final regulations had three principal components. First, OPM used Presidential authority delegated under 5 U.S.C. 3301 and 3302 and E.O. 10577 to regulatorily define the phrases “confidential, policy-determining, policy-making or policy-advocating” and “confidential or policy-determining” to refer exclusively to political appointments, with no application to career employees.

Second, OPM used those same delegated Presidential authorities to add a new subpart F to 5 CFR part 302. Subpart F prescribed mandatory procedures for transferring positions into the excepted service, or into a new excepted service schedule. Subpart F also required agencies to notify employees that involuntary movements or transfers into a policy-influencing position would not affect their competitive status or civil service appeals and would allow employees to appeal to the MSPB to the extent that an agency committed procedural error or indicated that the transfer would terminate adverse action appeals.

Third, OPM used its own statutory authority under 5 U.S.C. 7514 to provide that, notwithstanding 5 U.S.C. 7511(b)(2), any tenured civil service employees whose positions were moved, or who were otherwise moved into policy-influencing excepted service positions, would remain covered by chapter 75 procedures.

Under the April 2024 final rule, a re-issued Schedule F could not cover career positions, MSPB adjudicators could overturn transfers into Schedule F, and incumbent employees could keep

MSPB appeal rights even if their positions were transferred into Schedule F.

The rulemaking responded to a National Treasury Employees Union petition for regulations to prevent the reinstatement of Schedule F.⁵⁶ The final rule candidly acknowledged disagreement with E.O. 13957 but explained that “OPM does not and cannot prevent a President from creating excepted service schedules or from moving employees.”⁵⁷

During the 2024 election cycle President Trump announced plans to reissue E.O. 13957 if re-elected.⁵⁸ Donald Trump won the 2024 Presidential election and promptly fulfilled this commitment, issuing E.O. 14171 on January 20, 2025.⁵⁹ The new order reinstated E.O. 13957, while amending it in several ways.⁶⁰ The order redesignates “Schedule F” as “Schedule Policy/Career.”⁶¹ This change in nomenclature emphasizes that covered positions remain career positions and are not being converted into political appointments—a common misperception of the original order. The E.O. emphasizes that patronage remains prohibited by defining Schedule Policy/Career to only cover “career positions.”⁶² The E.O. also expressly describes what is and is not required of Schedule Policy/Career employees: “Schedule Policy/Career [employees] are not required to personally or politically support the current President or the policies of the current administration. However, Schedule Policy/Career employees are required to faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Failure to do so is grounds for dismissal.”⁶³

E.O. 14171 also requires OPM to apply Civil Service Rule 6.3(a) to Schedule Policy/Career positions.⁶⁴ This rule authorizes OPM to prescribe

⁴⁴ *Id.*

⁴⁵ See, e.g., Juliet Eilperin et al., *Resistance from Within: Federal Workers Push Back Against Trump*, Wash. Post, Jan. 31, 2017, https://www.washingtonpost.com/politics/resistance-from-within-federal-workers-push-back-against-trump/2017/01/31/c65b110e-e7cb-11e6-b82f-687d6e6a3e7c_story.html.

⁴⁶ U.S. Gov’t Accountability Off., GAO–22–105504, *Civil Service: Agency Responses and Perspectives on Former Executive Order to Create a New Schedule F Category for Federal Positions*, at 10 (Sept. 2022) (2022 GAO Report), <https://www.gao.gov/assets/gao-22-105504.pdf>.

⁴⁷ E.O. 14003, 86 FR 7231, 7231 (Jan. 22, 2021).

⁴⁸ *Id.* at 7231–32.

⁴⁹ E.O. 13957, 85 FR at 67634.

⁵⁰ See 5 U.S.C. 2302(b).

⁵¹ *Supra* n. 49.

⁵² U.S. Off. of Pers. Mgmt., *FEVS: Empowering Employees. Inspiring Change 11* (2020), <https://www.opm.gov/fevs/reports/governmentwide->

[reports/governmentwide-reports/governmentwide-management-report/2020/2020-governmentwide-management-report.pdf](https://www.opm.gov/fevs/reports/governmentwide-).

⁵³ See *id.* at 10–11.

⁵⁴ In addition, the notion that the career civil service needed to be “rebuilt” because of E.O. 13957 was clear hyperbole, as no positions were ever moved into Schedule F. See 2022 GAO Report at 10.

⁵⁵ Upholding Civil Service Protections and Merit System Principles, 89 FR 24982 (April 9, 2024) (Upholding Civil Service Protections).

⁵⁶ See Nat’l Treasury Employees Union, Petition for Regulations to Ensure Compliance with Civil Service Protections and Merit System Principles for Excepted Service Positions (Dec. 12, 2022), <https://www.nteu.org/~media/Files/nteu/docs/public/opm/nteu-petition.pdf?la=en>.

⁵⁷ See Upholding Civil Service Protections, 89 FR at 25009.

⁵⁸ See, e.g., Donald J. Trump, *President Trump’s Plan to Dismantle the Deep State and Return Power to the American People* (Mar. 21, 2023), <https://www.donaldjtrump.com/agenda47/agenda47-president-trumps-plan-to-dismantle-the-deep-state-and-return-power-to-the-american-people>.

⁵⁹ See E.O. 14171, 90 FR 8625 (Jan. 31, 2025).

⁶⁰ See *id.* at 8625–26.

⁶¹ *Id.* at 8625.

⁶² See *id.* at 8625–26.

⁶³ *Id.* at 8626.

⁶⁴ See *id.* at 8625.

by regulation conditions under which excepted positions may be filled in the same manner as competitive service positions are filled and conditions under which persons so appointed may acquire competitive status in accordance with the Civil Service Rules and Regulations.⁶⁵ E.O. 14171 thus requires OPM to establish merit-based hiring procedures for Schedule Policy/Career positions.

E.O. 14171 also overrode significant parts of the April 2024 final rule. That rule used delegated Presidential authority under 5 U.S.C. 3301 and 3302 to amend parts 210 and 302 of the Civil Service Regulations. President Trump used his executive authority to directly render those amendments inoperative. E.O. 14171 now requires that OPM rescind the amendments made by the April 2024 final rule.⁶⁶ E.O. 14171 further provides that “[u]ntil such rescissions are effectuated (including the resolution of any judicial review) 5 CFR part 302, subpart F, 5 CFR 210.102(b)(3), and 5 CFR 210.102(b)(4) shall be held inoperative and without effect.”⁶⁷ Consequently, both the April 2024 final rule’s definition of “confidential, policy-determining, policy-making, or policy-advocating” as a term of art that refers exclusively to political appointees⁶⁸ and its procedural requirements for moving employees into such policy-influencing positions⁶⁹ are no longer in effect.

In a structural difference with the original E.O. 13957, the President—not OPM—will now move positions into Schedule Policy/Career. Pursuant to E.O. 14171, agencies will assess their workforces and petition OPM to recommend that the President move specific positions into Schedule Policy/Career.⁷⁰ OPM will review these petitions and make the recommendations it deems appropriate.⁷¹ However, the President will make the final decision about which positions go into Schedule Policy/Career.⁷² That decision will be effectuated by a new executive order issued under Presidential—not OPM—authority.

E.O. 14171 provided additional guideposts for agencies when assessing which positions may belong in Schedule Policy/Career. These

guideposts include considering both immediate and higher-level supervisors of employees in Schedule Policy/Career for inclusion in Schedule Policy/Career.⁷³ If a subordinate employee is in a policy-influencing role, superior officials with authority to tell that employee what to do are also likely policy-influencing. E.O. 14171 further requires agencies to consider positions with duties that the OPM Director indicates may be appropriate for inclusion in Schedule Policy/Career.⁷⁴ OPM later issued guidance about types of positions agencies should consider in their Schedule Policy/Career reviews.⁷⁵

President Trump also explained why he issued this order. E.O. 14171 cited MSPB research showing only 41 percent of supervisors are confident they could remove a subordinate for serious misconduct, and just 26 percent are confident they could remove one for poor performance.⁷⁶ The order explained that: “[a]ccountability is essential for all federal employees, but it is especially important for those who are in policy-influencing positions. These personnel are entrusted to shape and implement actions that have a significant impact on all Americans.”⁷⁷ As discussed below, however, there have been recent, numerous, and well-documented cases of career Federal employees resisting and undermining the policies and directives of their executive leadership.

C. Reasons for New Rulemaking

1. Change in Administration Policy and Operative Legal Standards

Through this rulemaking, OPM is now finalizing regulations to rescind the changes made by the April 2024 final rule, implement E.O. 14171, and establish Schedule Policy/Career for policy-influencing career positions. Schedule Policy/Career positions will generally be filled using merit-based competitive hiring procedures, with

exceptions only for those positions currently filled using excepted hiring procedures. Individuals appointed or reassigned to Schedule Policy/Career positions will be excepted from chapter 43 and 75 procedures for performance-based and adverse actions. They will be exempt from statutory PPP coverage under 5 U.S.C. 2302(b) as policy-influencing positions are not covered positions under 5 U.S.C. 2032(a). However, E.O. 13957 is explicit that agencies must establish and enforce internal policies barring PPPs including whistleblower reprisal. Consequently, Schedule Policy/Career employees will remain career employees, while subject to elevated levels of accountability for their performance and conduct. For the reasons explained in greater detail in the proposed rule, OPM is proceeding with these changes to ensure accountability of the Federal career workforce charged by the President to deliver on the bold policy agenda endorsed by the American voters, as well as to bring the civil service regulations into conformity with operative legal requirements.

2. Needed To Address Factors Inadequately Considered in Prior Rulemaking

OPM also now realizes that it gave inadequate consideration to several factors when issuing the April 2024 final rule. Upon further consideration, OPM has concluded that these factors call for issuing this final rule.

i. Adverse Action Procedures Make Addressing Poor Performance, Misconduct, and Corruption Challenging

Chapter 75 requires that most agencies follow specific procedures to take adverse actions against employees for misconduct or poor performance. Chapter 43 sets out procedures for actions based on unacceptable performance (*i.e.*, performance-based actions). However, decades of experience have demonstrated that the procedures described in chapters 43 and 75 are inadequate to allow agencies to hold employees accountable for poor performance, misconduct, or corruption.

The substantial evidence documented in the proposed rule and this final rule demonstrate the extent to which existing authorities leave agencies unable to effectively address poor performance, misconduct, and corruption. Moreover, the April 2024 final rule imposed additional procedural hurdles that would delay or prevent agencies from effectively addressing these issues.

⁶⁵ 5 CFR 6.3(a).

⁶⁶ See E.O. 14171, 90 FR at 8626.

⁶⁷ *Id.*

⁶⁸ See Upholding Civil Service Protections, 89 FR at 25045.

⁶⁹ See *id.* at 25046–47.

⁷⁰ See E.O. 13957, 85 FR at 67633–34; E.O. 14171, 90 FR at 8625–26.

⁷¹ See *id.*

⁷² See *id.*

⁷³ See *id.*

⁷⁴ See *id.*

⁷⁵ U.S. Off. of Pers. Mgmt., *Guidance on Implementing President Trump's Executive Order titled, "Restoring Accountability To Policy-Influencing Positions Within the Federal Workforce"* (Jan. 27, 2025), <https://www.opm.gov/chcoc/latest-memos/guidance-on-implementing-president-trump-s-executive-order-titled-restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce.pdf> (January 2025 Memorandum).

⁷⁶ See E.O. 14171, 90 FR at 8625; see also Merit Sys. Prot. Bd., *Remedying Unacceptable Employee Performance in the Federal Civil Service* at 15 (June 18, 2019) (Remedying Unacceptable Employee Performance), https://www.mspb.gov/studies/researchbriefs/Remedying_Unacceptable_Employee_Performance_in_the_Federal_Civil_Service_1627610.pdf.

⁷⁷ E.O. 14171, 90 FR at 8625.

The proposed rule cited a wide range of data demonstrating the need for these reforms. Nevertheless, several commenters have argued against OPM's reliance upon this data. Commenters such as 1443, 2869, 14463, 16846, 26624, 27012, 28185, 28202, 28619, 32647, 34522, 35520, and others, claim that the proposed rule's citation to research published by the MSPB in 2016 and 2019 do not support the establishment of Schedule Policy/Career. Commenter 14463 asserts that the MSPB research is not based on objective facts nor suggests that political resistance is a problem. Commenters 19698, 30984, 35478, and 35520 criticize the research as not relevant to the class of employees who will be reassigned or hired into Schedule Policy/Career.

OPM notes, however, that these Commenters do not dispute the MSPB's findings that establish that supervisors believe they lack the ability to effectively address poor performance and misconduct, or that few employees believe their agencies address poor performers effectively. Although the research does not discuss establishing Schedule Policy/Career to address these issues amongst senior career professionals, conversely the research does not recommend against doing so. Additionally, FEVS data published after this research and cited in the proposed and final rules indicate that these problems of employee accountability continue. In fact, Commenters 8029's and 14463's highlighting of other factors further supports this final rule as the removal of statutory adverse action procedures lessens the reliance on human resources processes and reduces leadership adversity to litigation, both driven by performance-based and adverse action procedures. OPM relies on the MSPB research to support the proposition that agencies continue to face substantive problems with poor performance and misconduct. This final rule establishes reforms consistent with the problems identified in MSPB's research and FEVS data that shows agencies face a lingering problem with addressing poor performance and misconduct.

Commenter 30426 claims that OPM failed to demonstrate that FEVS data shows that only a minority of employees believe that agencies appropriately deal with poor performers. This claim is puzzling. OPM cited to FEVS data in the proposed rulemaking showing a historical range of between 25 and 42 percent of Federal employees believe steps are taken to deal with a poor performer in their work unit who cannot

or will not improve.⁷⁸ This is supported by the historical FEVS data available to the public on OPM's website.⁷⁹ OPM explained that employees are able to directly observe whether their agencies remove poorly performing employees or if they stay in their work unit and continue to underperform. This is a logical basis to reject the conclusion that employees do not know what steps their agencies are taking to address poor performance. They may not see intermediate steps, but they see the end result.

Commenters 29987 and 30426 also argue that OPM's data does not show whether poor performance is actually widespread, or if it merely represents a large number of employees reporting the same few individuals. Commenter 30426 also criticizes the fact that OPM cites some sources dating to the mid-2000s and mid-2010s. Commenters 0085, 3728, 6205, 7795, 14463, 29987, 35520, and others, take issue with OPM's reliance upon existing data, describing it, variously, as "incomplete," lacking "context," as not actually documenting widespread lack of accountability or poor performance, or as a "gotcha" designed to stifle opposition to the proposed rule. Commenters 0210, 3326, 2764, 16846, 18811, 27647, 29923, 30317, 31210, 34881, and 35446 assert—without evidence—that the instances cited in the proposed rule do not substantiate widespread claims of poor performance. The proposed rule provided numerous examples, case studies, surveys, and academic articles discussing poor performance in the Federal Government.⁸⁰ OPM notes that the FEVS ask employees about what happens to poor performers "in [their]

work unit"⁸¹—generally smaller groupings of employees—which makes it unlikely the widespread negative responses represent just a few individuals across the entire agency. At a minimum, employees in a significant number of work units are reporting the presence of at least one poor performer. Furthermore, these commenters fail to provide evidence that poor performance is not widespread or that the number of poor performers is limited to a few individuals. OPM also takes note of Commenter 29987's concession that, in the experience of the former EPA officials who volunteer for Commenter's organization, performance-based actions are not easily proven or quickly effectuated, and are not infrequently challenged successfully.⁸² OPM takes this admission against interest as evidence that even many Federal officials who oppose this rule recognize that performance-based actions are difficult to undertake.

Additionally, many agencies during the comment period reported to OPM that adverse action procedures make it very difficult for them to remove poor performers, and this is a significant problem.⁸³ OPM credits these comments. Agencies know what is occurring in their workforces and are often best positioned to evaluate challenges impacting them. The Department of Health and Human Services (HHS), for example, reported that it terminated 5, 4, and 7 career tenured employees for poor performance out of an employee population of 90,000 in fiscal years 2022, 2023, and 2024, respectively.⁸⁴ This happened despite the 2024 FEVS survey showing less than a quarter of HHS employees believe there are no

⁷⁸ 90 FR 17182, 17189 (Apr. 23, 2025). We note, as Commenter 27647 pointed out, that the reference for the FEVS data was missing from the proposed rule. To remedy this, we provide the citation here, which was also provided in a subsequent footnote in the proposed rule. See U.S. Off. of Pers. Mgmt., 2020 FEVS at 24, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwidemanagement-report/2020/2020-governmentwidemanagement-report.pdf>.

⁷⁹ See, e.g., U.S. Off. of Pers. Mgmt., *FEVS Results: Employees Influencing Change* at 29 (2015), <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwidemanagement-report/2015/2015-governmentwidemanagement-report.pdf>; U.S. Off. of Pers. Mgmt., *FEVS: Empowering Employees. Inspiring Change* at 24 (2020), <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwidemanagement-report/2020/2020-governmentwidemanagement-report.pdf>; U.S. Off. of Pers. Mgmt., *FEVS: Empowering Employees. Inspiring Change* at 15 (2021), <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwidemanagement-report/2021/2021-governmentwidemanagement-report.pdf>.

⁸⁰ 90 FR at 17189–91.

⁸¹ See, e.g., U.S. Off. of Pers. Mgmt., *FEVS Results: Employees Influencing Change* at 29 (2015), <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwidemanagement-report/2015/2015-governmentwidemanagement-report.pdf>; U.S. Off. of Pers. Mgmt., *FEVS: Empowering Employees. Inspiring Change* at 24 (2020), <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwidemanagement-report/2020/2020-governmentwidemanagement-report.pdf>; U.S. Off. of Pers. Mgmt., *FEVS: Empowering Employees. Inspiring Change* at 15 (2021), <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwidemanagement-report/2021/2021-governmentwidemanagement-report.pdf>.

⁸² Comment 29987 at 11, 18 ("In the decades of experience of EPN volunteers, many of whom were managers at EPA, disciplinary actions for misconduct, unlike performance-based disciplinary actions, are easily proven, quickly effectuated, and seldom challenged successfully.") (emphasis added).

⁸³ See, e.g., Comments 29917 and 31998 (HHS), 35535 (Department of Labor), and 35549 (Department of Veterans Affairs).

⁸⁴ Comments 29917, 31998.

poor performers in their work unit, while 30 percent reported poor performers exist in their unit, and typically remain on the job and continue to underperform, rather than being removed.⁸⁵ This is strong, contemporaneous evidence that the Government has a serious performance management problem. It is not credible to anyone—including HHS employees—that just one in 10,000 HHS employees is a poor performer. Nonetheless, HHS performance-based dismissals still number in the single digits.

Finally, Commenters 27467, 30055, and 30426's criticism of OPM citing data from 2003 and 2014 is without merit. Specifically, the proposed rule noted that the National Commission on Public Service concluded that: "[f]ederal employees themselves are unhappy with the conditions they face. . . . They resent the protections provided to those poor performers among them who impede their own work and drag down the reputation of all government workers."⁸⁶ Employee accountability procedures have not fundamentally changed in the interim—employees operate under the same adverse action procedures as one and two decades ago. This data, together with the FEVS data, supports the conclusion that accountability of the workforce is a longstanding problem, as stated in the proposed rulemaking.

Commenters 14463, 27647, and 30426 also object to OPM citing news reports and academic research discussing surveys of Federal employees and managers without providing the actual data used by the news sources or researchers supporting their publications. In the proposed rule, OPM cited to a news article appearing in *Government Executive* from the mid-2010s, discussing a poll the outlet's research arm had commissioned. OPM also cited and linked to an academic survey of Senior Executive Service (SES) members conducted by researchers affiliated with Vanderbilt and Princeton Universities, that provided the precise survey questions, sample size, and margin of error data. Notwithstanding these Commenters' arguments, OPM is not required to obtain the raw microdata underlying

academic studies or publicly reported polls to take note of them in a rulemaking. Commenter 27647 complained of inability to access the source cited in footnote 103 despite it being readily available through online retailers such as Amazon.

Commenters 8029, 14463, 19791, 28481, 30426, and 35478 argue that none of the sources OPM cites provide logical support for the changes under the proposed rule. Commenter 8029 takes issue with OPM's interpretation of the research, suggesting that there are other problems such as lack of management support and poor human resources staffing that contribute to the problems of poor performance and misconduct. Commenter 14463 points out that a Department of Homeland Security (DHS) report from June 17, 2019, points to DHS' failure to properly resource, design, and oversee the Department's disciplinary program. Commenters 19698, 30984, 35478, and 35520 criticize the research as not relevant to the class of employees who will be reassigned or hired into Schedule Policy/Career.

Instead, these Commenters argue that better processes, more flexible personnel systems, more leadership support, and more training for managers on how to use the existing performance management system would better address poor performance and misconduct. Similarly, referring to the documented instances of sexual harassment at the Federal Deposit Insurance Corporation (FDIC), Commenters 29374 and 32793 argue that it would be more effective to change the culture of the organization using existing accountability tools, rather than promulgating a new rule to implement Schedule Policy/Career.

Despite the commenters' beliefs, evidence showing the Federal performance management system is dysfunctional and prevents agencies from effectively addressing poor performance is legion. Federal employees have, for decades, responded to Federal surveys that their agencies do not effectively address poor performers. During the proposed rule's comment period, OPM received comments from Federal employees complaining that agencies rarely address poor performance. For example, OPM received comments from Federal employees and others complaining about other Federal employees "retiring in place" and continuing to draw a paycheck despite doing little work, noting that agencies do not remove these employees and that this inaction is demoralizing to employees who want

to do well.⁸⁷ This phenomenon is supported by OPM's FEVS survey data, which reflects that many supervisors report they do not believe they could remove poor performers. Agencies, too, told OPM that performance management is a serious problem and provided data to support their concerns.

Numerous reports spanning many decades⁸⁸ have recommended other options like "better training managers on how to use performance management systems," but all such initiatives have had little impact—predictably so, given the burden and complexity of the current chapter 75 and 43 removal procedures, which often involve multiple layers of appeals.⁸⁹ Commenter 30165 states that the cited cases are "primarily of issues other than policy execution or of serious misconduct," and "not of employees failing to execute agency priorities." The cited problems,

⁸⁷ See, e.g., Comments 1734 and 5335.

⁸⁸ Remedying Unacceptable Employee Performance, https://www.mspb.gov/studies/researchbriefs/Remedying_Unacceptable_Employee_Performance_in_the_Federal_Civil_Service_1627610.pdf; MSPB, Addressing Misconduct in the Federal Civil Service: Management Perspectives (Dec. 2016), https://mspbpublic.azurewebsites.net/studies/researchbriefs/Addressing_Misconduct_in_the_Federal_Civil_Service_Management_Perspectives_1363799.pdf; MSPB, Addressing Poor Performers and the Law (Sept. 2009), https://mspbpublic.azurewebsites.net/studies/studies/Addressing_Poor_Performers_and_the_Law_445841.pdf; MSPB, Removing Poor Performers in the Federal Service (Sept. 1995), https://mspbpublic.azurewebsites.net/studies/studies/Removing_Poor_Performers_in_the_Federal_Service_Issue_Paper_September_1995_253662.pdf; MSPB, The Changing Federal Workplace: Employee Perspectives (1996), https://mspbpublic.azurewebsites.net/studies/studies/The_Changing_Federal_Workplace_Employee_Perspectives_253655.pdf; MSPB, The Federal Workforce for the 21st Century: Results of the Merit Principles Survey at ix (Sept. 2003), https://mspbpublic.azurewebsites.net/studies/studies/The_Federal_Workforce_for_the_21st_Century_Results_of_the_Merit_Principles_Survey_2000_253631.pdf ("While 45 percent of respondents said their supervisor retains employees based on their job performance, just 35 percent claimed that their supervisor deals effectively with misconduct on the job, and just 22 percent said their supervisor deals effectively with poor performers."); MSPB, The Other Side of the Coin: Removals for Incompetence in the Federal Service (Feb. 1982), https://mspbpublic.azurewebsites.net/studies/studies/The_Other_Side_of_the_Merit_Coin_Removals_for_Incompetence_in_the_Federal_Service_254732.pdf.

⁸⁹ OPM acknowledges the need for training supervisors and is simultaneously introducing a new government-wide training program for supervisors on performance management. OPM, "Performance Management for Federal Employees," June 17, 2025, <https://www.opm.gov/chcoc/transmittals/2025/Performance%20Management%20for%20Federal%20Employees%207-17-2025.pdf>. However, it understands based on long experience that enhanced training is unlikely to be enough to meaningfully change an entrenched culture, especially as this culture arose in large part due to the cumbersome nature of adverse action procedures required to remove employees.

⁸⁵ U.S. Off. of Pers. Mgmt., *2024 Office of Personnel Management FEVS: Report by Agency* (2024), at Tables Q16.2 & Q16.5, <https://www.opm.gov/fevs/reports/data-reports/data-reports/report-by-agency/2024/2024-agency-report-excel.xlsx>.

⁸⁶ 90 FR at 17189 (quoting The Nat'l Comm'n on Pub. Serv., *Urgent Business for America: Revitalizing the Federal Government for the 21st Century* at 12 (Jan. 2003), <https://www.brookings.edu/wp-content/uploads/2016/06/01governance.pdf>).

however, have been longstanding and consistent. OPM believes Schedule Policy/Career would be more effective in addressing these performance management challenges in policy-influencing positions than doubling down on prior practices that have not succeeded. Further, agencies have told OPM they believe the rulemaking would be beneficial and help them manage affected employees more effectively, including holding them accountable for poor performance. OPM credits agency experience and expertise, as well as the fact that this reform addresses a major driver of the difficulty in removing poor performers.

Commenters 2222, 27432, and 30426 also take issue with the examples cited in the proposed rule to support OPM's argument that the adverse action process is protracted with an uncertain outcome. OPM presented a handful of cases as an illustration of the impediments MSPB cases impose. Commenter 30426 asserts that average case processing time in FY 2024 was 130 days. This is only for initial decisions before an administrative judge and does not include time to adjudicate a petition for review (*i.e.*, appeal) to the full MSPB. Full MSPB review adds much more time, especially if the MSPB loses its quorum as it often has. An employee's subsequent appeal to the Federal Circuit takes even more time. Citing one stage of the MSPB appeal process for the proposition that the process is "hardly protracted" is misleading. OPM rightly takes note of the effect of the MSPB's loss of quorum on the appeals timetable. Relatedly, Commenters 17360, 24390, 30426, and 32556 point out that President Trump left MSPB without a quorum during the entirety of his first term. President Trump nominated numerous individuals to the MSPB, but the Senate did not act on those nominations. During his second Administration, the President nominated and the Senate confirmed James Woodruff to serve as a Member, creating a period of approximately eight months in which the MSPB operated without a quorum. Neither the President nor OPM can control the pace at which the Senate considers MSPB nominees, even if they leave the agency without a quorum. However, OPM must be cognizant of the fact that the pace at which the Senate considers nominees affects the resolution of MSPB appeals, creating real effects on agency operations.

Commenter 30426 argues that the best available evidence suggests poor performance is not widespread in the Federal workforce, citing FEVS data that "well over 80% of employees believe

employees in their work unit "meet the needs of our customers," "contribute positively" to agencies' performance, and "produce high-quality work." Commenter 34522 criticizes OPM's citation to research and FEVS data because the data only demonstrates a perception problem. Commenter 22688 describes low performers in the workplace as "just a fact of life," common in all large entities. Despite the commenters' interpretation, the actual FEVS data paints a more worrisome picture:

- 83.4 percent of employees believe employees in their work unit "always" or "most of the time" "produce high-quality work." 13.4 percent believe they do so "sometimes", while 3.2 percent believe they do so "rarely" or "never."⁹⁰

- 87.7 percent of employees believe employees in their work unit "always" or "most of the time" "meet the needs of our customers." 10.3 percent believe they do so "sometimes", while 2 percent believe they do so "rarely" or "never."⁹¹

- 85.9 percent of employees believe employees in their work unit "always" or "most of the time" "contribute positively to their agency's performance." 11.2 percent believe they do so "sometimes", while 3 percent believe they do so "rarely" or "never."⁹²

The fact that more than one-in-ten Federal employees answers "sometimes" to these questions is concerning. Agencies should not "sometimes" meet the needs of the American people. The fact that 2–3 percent answered "rarely" or "never" is even more concerning. OPM interprets the FEVS data as showing that most Federal employees believe their colleagues do high-quality work, but a meaningful number do not, and the Federal workforce has substantial performance management challenges that are not being effectively addressed. This rulemaking is not predicated on the notion that most Federal employees are poor performers. Rather, there is a cognizable amount of poor performance which, when it occurs, impairs agency performance. There is no inconsistency between saying most Federal employees do good work and that a minority do

not, and that the minority's underperformance needs to be addressed. This is particularly true for key policy-influencing positions that can affect the performance of an entire agency or even presidential administration.

Commenters 26624 and 28202 take issue with the assertion that poor performers remain in policy-influencing positions and criticize the lack of supporting evidence to justify the wholesale changes proposed by OPM. The Commenters point to OPM's citation of just two instances involving the Chief of the U.S. Park Police and, separately, the Executive Director of the National Council on Disability, as specifically inadequate. Respectfully these Commenters misunderstand this portion of the proposed rule and the reasons for citing to these two examples. OPM argued that the Government suffers from a long-standing problem of holding subordinates accountable for misconduct and poor performance. OPM then cited two examples of senior career officials with serious misconduct and performance issues who remained in their positions despite agency efforts to remove them from their positions. OPM cited these two examples to support our argument that failing to address misconduct and poor performance directly undermines the Merit System Principles. OPM later cited to the misconduct and corruption at other agencies such as the FDIC where a fear of litigation contributed to the tolerance of rampant sexual misconduct committed by senior officials. These examples together with the 2016 Merit Principles Survey cited in the proposed rule sufficiently detail the problem of agencies' inability to address misconduct and poor performance and how this failure undermines the Merit System Principles.

Commenter 30426 also raises concerns with OPM's statistical analysis of the number of employees terminated. Specifically, Commenter 30426 questions why OPM's analysis excluded all employees fired after less than two years of service and asserts that the exclusion of this data is arbitrary and capricious and OPM's analysis was thus insufficient. On the contrary, OPM's analysis was straightforwardly focused on the firing rates of employees covered by subchapter II of chapter 75 to evaluate whether that process makes removals more difficult. Probationary employees and employees on trial periods do not have access to adverse action appeals, so dismissal rates among such employees do not necessarily reflect the effect of chapter 75

⁹⁰ U.S. Off. of Pers. Mgmt., "Federal Employee Viewpoint Survey: 2024 Governmentwide All Levels-All Index-All Items Reports," at Q22, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-all-levels-all-index-all-items-reports/2024/2024-governmentwide-all-levels-all-index-all-items-report.xlsx>.

⁹¹ *Id.* at Q20.

⁹² *Id.* at Q21.

procedures.⁹³ OPM focused on permanent (*i.e.*, excluding term and political appointees) employees with more than 2 years of tenure because these are the employees that subchapter II covers.⁹⁴ Evaluating the effect of subchapter II by examining agency experiences with employees who are covered by it is hardly arbitrary or capricious.

Commenter 14463 asserts that OPM “ignores the fact that existing procedures have resulted in the firings of tens of thousands of poor performing career employees.” In support of this assertion, the Commenter cites to a 2015 MSPB report, “Adverse Actions: The Rules and the Reality.”⁹⁵ According to the Commenter, the fact that only 10% of deciding and proposing officials felt employees had too many rights in the context of adverse actions, means that employees have the appropriate amount of rights. OPM disagrees, and in fact, believes the cited source further supports the need for Schedule Policy/Career. The question presented was whether deciding and proposing officials agreed with the statement: “Federal employees have too many rights.” 42% of the respondents answered “neutral,” while 35% answered “agree or strongly agree.”⁹⁶ The fact that only 23% of deciding and proposing officials *disagree* with the statement that employees have too many rights demonstrates the need of reform to the Federal performance management system.

Several commenters, including Commenters 2241, 7611, 13583, 20991, 30426, and 31096, argued that the proposed rulemaking failed to cite evidence supporting its conclusion of widespread corruption in the career civil service. Commenter 30426, for example, critiques the proposed rulemaking’s citation to corruption at the FDIC because the administration is closing offices that were meant to

provide the training the report recommended to prevent future abuses. Commenter 30426 ignored the serious and well documented example of corruption in the civil service. The proposed rule cited examples such as the FDIC where an independent investigation documented widespread and longstanding abuses, including widespread sexual misconduct involving senior executives pressing junior female employees for sexual favors, at times providing career assistance in return.⁹⁷ The report cited in the rulemaking specifically identified adverse action procedures as creating litigation risk that made the agency extremely reluctant to take action, even when leadership was aware of misconduct.⁹⁸ Because removals created such litigation risk, the agency would move the offending employees around rather than dismiss them.⁹⁹

Corruption is not limited to the FDIC. Since publication of the proposed rule, a Small Business Administration (SBA) loan officer pleaded guilty to making false statements to SBA in connection with loan applications for more than \$550,000.¹⁰⁰ The employee in question abused her position by approving several fraudulent COVID-19 pandemic loans she and her relatives submitted but that SBA initially declined.¹⁰¹ At the Department of the Army, the former deputy director of the U.S. Army Signal Network Enterprise Center used his position to steer business toward a specific, corrupt vendor.¹⁰² The former official accessed contract bid and proposal information used by a vendor to assist in winning a contract for upgrading the Army’s communications infrastructure at Fort Gordon.¹⁰³ The existence of such a scheme uncovered within the U.S. Army demonstrates the ease and feasibility of such misconduct occurring at other agencies throughout

the Federal Government.¹⁰⁴ The creation of Schedule Policy/Career offers a comprehensive solution to the government-wide problems created by the lengthy and litigious nature of the current removal procedures, at least with respect to policy-influencing positions.

OPM recognizes that chapter 75 provides a pathway for agencies to address misconduct, including removing employees from the Federal service in circumstances such as those at the FDIC and the Army. In many cases, Federal agencies have been successful in doing so. However, these processes alone have proven insufficient. They foster a sense of futility and powerlessness at agencies which understandably seek to avoid spending their limited time and resources on litigation to remove employees who perform poorly or engage in misconduct. This sense of futility and powerlessness is evidenced, as noted above and in the proposed rule, in the lack of faith in the ability of agencies to hold employees accountable for poor performance and the relatively small number of adverse actions taken by agencies across Government. OPM finds it highly disturbing that only a minority of agency supervisors are confident they could remove subordinates for serious misconduct. This survey data shows that incidents like those at the FDIC illustrate systemic problems across the Government. What is needed to address this corruption and restore integrity to the Federal service is to break this cycle of poor performance and misbehavior that undermines the faith that the American people place in Government. It is, therefore, perfectly reasonable that the President reform how the executive branch manages career officials who are most responsible for the success of his policy agenda.

Commenters 0563, 12281, and 14010 argue that the cited instances of agencies’ hesitancy to take appropriate action when faced with evidence of poor performance or misconduct are insufficient to justify a rule allowing for prompt agency action. These commenters miss a critical point. Any misconduct in the Federal service is a blot on its integrity. The FDIC report concerning sexual harassment found that the agency had “generally taken a risk-averse approach to the imposition of discipline.” It found that “the FDIC, like other federal agencies, risks having complaints and lawsuits” when taking adverse action against employees. Because removals created such litigation

⁹³ Competitive service employees and preference-eligible employees in the excepted service complete their probationary and trial periods, respectively, after one year of continuous service, while non-preference eligible employees generally take two years of continuous service to complete their trial period. Thus, the appropriate comparison is employees with more than two years of tenure, as they have almost universally completed their probationary and trial periods and are covered by subchapter II. See 5 U.S.C. 7511(a)(1).

⁹⁴ We note, as Commenter 27647 pointed out, that the citation for the number of covered employees was missing in the proposed rule. This data is from the same source as the 2024 Rule, 89 FR 25039. See Off. of Pers. Mgmt., FedScope, Separations Trend FY 2020–FY 2024, <https://www.fedscope.opm.gov/>.

⁹⁵ U.S. Merit Sys. Prot. Bd., Adverse Actions: The Rules and the Reality, (Aug. 2015), https://www.mspb.gov/studies/researchbriefs/Adverse_Actions_The_Rules_and_the_Reality_1205509.pdf.

⁹⁶ *Id.* at 6.

⁹⁷ See 90 FR at 17190 (citing Joon H. Kim, Jennifer K. Park, and Abena Mainoo, “Report for the Special Review Committee of the Board of Directors of the Federal Deposit Insurance Corporation,” April 2024, <https://www.fdic.gov/sites/default/files/2024-05/cleary-report-to-fdic-src.pdf> (FDIC Report)).

⁹⁸ *See id.*

⁹⁹ See FDIC Report at 134, A–15, A–33, and A–37.

¹⁰⁰ News Release, U.S. Small Bus. Admin., *Former Federal Employee and Two Other Women Plead Guilty in Pandemic Fraud Cases* (Aug. 12, 2025) <https://www.sba.gov/article/2025/08/12/former-federal-employee-two-other-women-plead-guilty-pandemic-fraud-cases>.

¹⁰¹ *Id.*

¹⁰² Press Release, U.S. Dep’t of Justice, *Former deputy director of Signal Network Enterprise Center at Fort Gordon sentenced to federal prison* (July 21, 2020), <https://www.justice.gov/usao-sdga/pr/former-deputy-director-signal-network-enterprise-center-fort-gordon-sentenced-federal>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

risk, the agency would move employees around rather than dismissing them.¹⁰⁵ Commenter 35478 takes issue with the proposed rule's citation to specific pages in the FDIC report for not supporting the proposition that adverse actions and appeals were a major reason for the lack of accountability, pointing out that the auditors identified 10 "root cause[s]" of the misconduct. However, OPM did not contend adverse action procedures were the sole reason for the problems at the FDIC and still finds sufficient evidence in the FDIC report to support its position. The FDIC report identified risk aversion to the disciplinary process perpetuating a lack of accountability in the agency as one of the root causes of its culture of corruption.¹⁰⁶ The report specifically quoted a senior supervisor as noting "we are so risk averse we can't do anything, scared that the employees will sue us, and the ramifications are what you are seeing."¹⁰⁷ The factual record clearly demonstrates that current regulations, exacerbated by the April 2024 final rule, place unwarranted burdens upon agencies, which often prevents them from taking timely adverse action when faced with poor performance, misconduct, or corruption.¹⁰⁸

It is no surprise, then, that the President made the same determination. E.O. 13957, as amended, explained that "[a]gencies need the flexibility to expeditiously remove poorly performing employees from [Schedule Policy/Career] positions without facing extensive delays or litigation."¹⁰⁹ It cited evidence that less than a quarter of Federal employees believed their agencies appropriately addressed poor performance, and less than half believe they could remove employees who committed serious misconduct.¹¹⁰ President Trump ultimately found that

the conditions of good administration still exist today warranting immediate action through executive action. As such, OPM concludes that even if the evidence discussed in this final rule were not independently persuasive and sufficient to support this final rule—and to be clear, OPM believes that it is—it would nonetheless credit the President's judgment within his core Article II authority to address the problems of poor performance, misconduct, and corruption in the civil service.

ii. Proposed Regulations Are Necessary To Strengthen Democracy and Promote a Nonpartisan Civil Service

Commenters 1544, 9407, and 23384, and others characterize this rule as undermining democracy in favor of an authoritarian form of Government. Commenter 23384, specifically, suggests that the "independence of bureaucracy" is necessary to prevent authoritarianism. On the contrary, this rule ensures that Federal employees in policy-influencing positions are able to be appropriately disciplined for failing to faithfully implement the elected President's agenda. The U.S. Constitution provides "[t]he executive Power shall be vested in a President of the United States of America."¹¹¹ As such, the President is also the only official in the executive branch whose position is vested with executive power who is democratically accountable to the American people. Employees exercising executive power are doing so in place of—and, crucially, on behalf of—the President of the United States. Employees themselves are only properly vested with executive policy-influencing authority in so far as they exercise it faithfully and in accordance with the Constitution, existing law, and the President's policy agenda. The "independence of the bureaucracy," to impose policy, or to scuttle, slow-walk, or otherwise undermine the President's policy agenda would bring about the very thing with which these commenters are concerned: the erosion of democracy. An unelected bureaucracy operating autonomously and at variance with the policy priorities of the elected President undermines democratic values.

OPM notes that, because of the enormous scope and intricacy of many Federal statutes, Federal policymaking work frequently requires high levels of specialization. Further, Federal agencies are bureaucratic, characterized by division of labor, hierarchy of authority, and career orientation. Because career employees often play the principal and sometimes exclusive role in determining

who is promoted through the hierarchy and on what schedule, career advancement in Federal service often has little to do with effective execution of the President's priorities. This is particularly true over longer periods of time, where the professional relationships between agency personnel outlast individual Presidential administrations and the procedural rules of the agency and informal norms coalesce to form an agency culture or shared bureaucratic interests.

In some instances, the priorities of the President may conflict with an agency's culture or bureaucratic interests. This can occur, for example, when agency personnel have acclimated to executing their statutory mission in a manner that conflicts with the procedural or substantive values of the President. As the late William Niskanen (a longtime Government official) noted in his classic study, *Bureaucracy and Representative Government* (Chicago: Aldine, Atherton, 1971), the "budget-maximizing bureaucrat" will typically seek to maximize the total budget of their bureau, regardless of the public interest, in order to maximize the bureau's power and prestige. Given the incentives of a career bureaucracy, where the interests of an agency are at variance with the priorities of the President, a rational civil servant will often prioritize the institutional interests of the agency ahead of implementing the priorities of the democratically elected President. Where career employees involved in policymaking prioritize "loyalty to their building" over faithful execution of the President's priorities and the public interest, democratic accountability is undermined.

Commenters 1994, 7378, 34746, and others argue that this rule would undermine the nonpartisan nature of the civil service by making it easier to fire employees in policy-influencing positions for political reasons, including failing to adhere to political loyalty tests.

Commenters' supposition that this rule requires, or provides for, the dismissal of employees for political reasons is wholly incorrect. OPM proposed and adopts in this final rule a prohibition against personal or political loyalty tests as a condition of employment in Schedule Policy/Career. 5 CFR 213.3601(e). E.O. 13957 also requires agencies to establish and enforce internal policies protecting employees from PPPs including prohibiting discrimination based on political affiliation and political coercion. Further, this rule provides that in instances in which an employee in a policy-influencing position engages in

¹⁰⁵ Some agencies reported during the comment period that their experience in dealing with poor performers or misconduct is to simply reassign employees to other positions rather than taking performance-based or adverse actions out of fear of litigation or protracted statutory procedures. Commenters 2985 (Department of Transportation), 29882 (Department of Education), and 29909 (Office of Special Counsel). OPM credits their accounts of how subchapter II affects agency decision-making.

¹⁰⁶ See FDIC Report at 154–55.

¹⁰⁷ *Id.* at 155.

¹⁰⁸ Commenter 35478 argues the fact the audit did not recommend changes to disciplinary procedures indicates they were not a major factor contributing to the FDIC's problems. Commenter's objection misses that FDIC has no authority to change those disciplinary procedures, which are set forth in statute, so such recommendations would be futile. OPM finds it unsurprising that an audit commissioned by the FDIC would not recommend changes the FDIC could not effectuate.

¹⁰⁹ 85 FR 67631, 67632.

¹¹⁰ *Id.* at 67631.

¹¹¹ U.S. Const. art. II, § 1, cl. 1.

misconduct, performs poorly, or obstructs the democratic process by intentionally subverting Presidential policy directives, such employees may be quickly removed from the service.

OPM also views this rule as strengthening the nonpartisan nature of the civil service by ensuring employees in policy-influencing positions do not inject personal politics into their professional responsibilities related to implementing the President's agenda.

Bureaucratic Resistance Is Evident

Commenters, including 0210, 3326, 3764, 16846, 18811, 27647, 29923, 30317, 31210, 32573, 34881, 35446, and 35478, assert that the proposed rule failed to provide evidence of widespread policy resistance. Despite these criticisms, considerable evidence supports the proposition that employees routinely inject their personal, partisan beliefs into their professional duties. Recent news reports detailed how career Federal employees resisted the changes pursued by the President during his current administration. One report detailed Federal employees engaged in "malicious compliance" with the President's directives.¹¹² In a much more brazen act of defiance, a report detailed how staff of the U.S. African Development Foundation refused to allow employees of the Department of Government Efficiency to enter its building as part of the President's promise to eliminate unnecessary bureaucratic spending.¹¹³ Relatedly, Commenter 23567 also witnessed acts of resistance by describing career employees leak, "slow walk," or deliberately perform poorly to resist changes to policies. In fact, in coordinating this final rule during the interagency comment period, a copy of the draft rule was leaked to the news media the same day that OPM briefed Federal agencies on the rule.¹¹⁴ And

most recently, OPM's proposed rule to modify its performance management regulations leaked within 24 hours after sharing the rule with federal agencies for interagency comments.¹¹⁵ This was a clear breach of trust placed in the Federal workforce.

Another example comes from Commenter 34007 who obtained documents through a Freedom of Information Act request that uncovered career employee resistance expressed to the General Counsel of the National Labor Relation Board under the first Trump administration. In one of these emails, a former longtime NLRB employee bragged about "the brave resistance" of career NLRB employees to the presidentially appointed General Counsel's priorities.¹¹⁶

There are also widespread reports of Federal employees "pushing back," engaging in "malicious compliance," or being "subtle" about opposing administration policymaking.¹¹⁷ Researchers documented that Environmental Protection Agency (EPA) career staff moved policy in the opposite direction from the Reagan Administration's goals, concluding that "the influence of elected institutions is limited when an agency has substantial bureaucratic resources and a zeal for their use."¹¹⁸ Commenter 32573 claims that the proposed rule mischaracterized the findings of researchers, noting that the EPA did not have a Senate-confirmed administrator when EPA career staff moved policy in the opposite direction, and that the Reagan administration drastically changed its policy later during the President's terms. However, we note that the EPA had an acting administrator during the time in question and EPA staff were surely informed of the Reagan administration's policy.¹¹⁹ The researcher found that even after the Senate confirmation of an Administrator "[t]he proclivity of EPA regulators to regulate seems to have been a factor negating the administration's ability to keep clean air enforcements to a

minimum."¹²⁰ Further, it is immaterial whether the Reagan administration changed its policy later in the president's terms. This does not rebut the proposition for which the research was cited in the proposed rule.

Commenter 8209 also criticizes the proposed rule's citation to a source that reported policy resistance during President Trump's first term.¹²¹ OPM notes that Commenter 8209 does not allege that the claims are fabricated or false but instead argues it should not be used to justify a change because of an alleged bias. OPM believes that this source—one of several—demonstrates that the first Trump administration faced policy resistance.

Commenters 30055 and 34522 also allege that the proposed rule mischaracterizes one of the cited sources on page 17191. However, Commenter 30055 failed to recognize that the proposed rule cited two different articles from the same author. While part of the second article discusses reciprocal hierarchy, much of the article discusses several instances of civil servant disobedience during the President's first administration. Further, the other article cited discusses disobedience in the context of the President's administration. Based on the content from both articles, we disagree with both commenters that the proposed rule mischaracterized those sources. Similarly, Commenter 34522 also claims the proposed rule fails to discuss all the relevant conclusions of another two sources.¹²² We disagree. While the first source discusses other behavioral patterns and disclaims the empirical accuracy of its studies, the Commenter does not dispute that it discusses the claims made by the proposed rule. Lastly, Commenter 34522 does not dispute that the second source also discusses the claims made by the proposed rule. While we recognize that the second source comes to additional conclusions OPM does not share, we do not agree that OPM's statements regarding the source are inaccurate.

The proposed rule cited several examples of career employees stating plans to resist policies they disliked. The Washington Post reported on an EPA career employee explaining that "she and her co-workers are focused on how to make sure the new administration does not walk back environmental regulations achieved

¹¹² Juliana Kaplan and Ayelet Sheffey, "Random acts of protest: How federal workers are quietly pushing back on DOGE," *Business Insider*, Mar. 8, 2025, available at: <https://www.businessinsider.com/federal-workers-resist-trump-musk-doge-dei-emails-pronouns-2025-3>.

¹¹³ Robert Tait and Lauren Gambino, "'Little agency that could' cheered for act of resistance against Trump and Musk," *The Guardian*, Mar. 6, 2025, available at: <https://www.theguardian.com/us-news/2025/mar/06/federal-workers-block-musks-doge-africa-development-agency>.

¹¹⁴ Eric Katz and Erich Wagner, "Final Schedule F regulations to describe civil service protections as 'unconstitutional overcorrections,'" *Government Executive*, Nov. 18, 2025, available at: <https://www.govexec.com/workforce/2025/11/final-schedule-f-regulations-describe-civil-service-protections-unconstitutional-overcorrections/409616/>; Courtney Rozen and Sarah N. Lynch, "US federal workers would lose whistleblower safeguards under Trump rule," *Reuters*, Nov. 18, 2025, available at: <https://www.reuters.com/legal/>

[government/us-federal-employees-would-lose-whistleblower-safeguards-under-trump-rule-2025-11-18/](https://www.epa.gov/history/chronology-epa-administrators).

¹¹⁵ Eric Katz, "Trump to limit top ratings for all feds and consolidate scoring in forthcoming rule," *Government Executive*, Dec. 17, 2025, available at: <https://www.govexec.com/management/2025/12/trump-limit-top-ratings-all-feds-and-consolidate-scoring-forthcoming-rule/410246/>.

¹¹⁶ Comment 34007, at 4.

¹¹⁷ Kaplan & Sheffey, *supra* note 112.

¹¹⁸ B. Dan Wood, *Principals, Bureaucrats, and Responsiveness in Clean Air Enforcements*, 82 *Am. Pol. Sci. Rev.* 213, 213 (1988).

¹¹⁹ See Env't Prot. Agency, *Chronology of EPA Administrators* (last updated Jan. 31, 2025), <https://www.epa.gov/history/chronology-epa-administrators>.

¹²⁰ B. Dan Wood, *Principals, Bureaucrats, and Responsiveness in Clean Air Enforcements*, at 228.

¹²¹ See Comment 8209 (citing to Mark Moyar, *Masters of Corruption: How the Federal Bureaucracy Sabotaged the Trump Presidency* 83–84 (2024)).

¹²² Comment 34522, n. 15 at p.9.

under Biden.”¹²³ An undercover journalist documented an employee in the White House Office of Pandemic Preparedness and Response Policy explaining that career employees “slow-walk” initiatives they dislike or “pretend to work really hard on something when they’re not.”¹²⁴ Others, like an Equal Employment Opportunity Commission (EEOC) employee, opt not to hide their opposition, but broadcast resistance plans. Soon after President Trump took office a second time, an EEOC administrative judge¹²⁵ addressed an email to then-acting EEOC Chairwoman Andrea Lucas and sent it to all EEOC employees. The administrative judge stated, in relevant part: “I will not participate in attempts to target private citizens and colleagues through the recent illegal executive orders.”¹²⁶ This employee openly professed her intention to refuse Presidential directives based purely on her personal views.¹²⁷ Commenters 13308, 34947, 34522, 35446, and 35478 claim that this is a mischaracterization of the employee’s actions. In this regard, they claim that the employee viewed the “presidential directives were illegal and unconstitutional.” OPM disagrees and believes the characterization is correct. The email was a general and broad

statement—broadcast to the entire agency—that this employee would not follow the administration’s policy directives. The email did not mention any conflicting legal precedent or discuss the policy directives in the context of any pending agency action. Line Federal employees are not statutorily authorized to unilaterally decide the constitutionality of agency policies for themselves. That authority rests with other officials, such as the Attorney General.¹²⁸ Further, none of the commenters provide any authority demonstrating that the policy directives were illegal. Therefore, the argument is faulty. OPM notes that nothing in this rule precludes an employee from discussing concerns about a presidential or agency policy with a supervisor or management.

During the previous Trump administration, multiple Federal Labor Relations Authority (FLRA) decisions publicly chastised a career regional director for “willful noncompliance” with an earlier Authority order.¹²⁹ This raises the obvious question—are chapter 75 procedures sufficient deterrent to ensure such employees are putting their partisanship aside and faithfully implementing the President’s agenda?

Finally, agencies also commented on the rule and indicated that they had experienced policy resistance, it impeded their operations, and they believed the proposed rule would be helpful in addressing such misconduct. The Department of Education, for example, commented that during the First Trump Administration, career employees would not constructively assist in drafting important regulations, such as the department’s Title IX regulations.¹³⁰ As a result, those regulations had to be primarily drafted by political appointees.¹³¹ OPM credits these comments; agencies are better positioned than external parties to observe whether policy resistance occurs.

Commenter 29987 asserts that academic research¹³² refutes OPM’s

assertion of widespread policy resistance. Specifically, the Commenter asserts “career civil servants generally do follow the president’s agenda.” OPM agrees with this sentiment as expressed in the proposed rule. However, this does not refute the point that *some* career employees intentionally subvert policy directives with which they disagree. In fact, the source cited by Commenter 29987 provides additional evidence of such behavior, describing instances of career employees leaking information to the press because they did not like the administration’s policy directives.¹³³ Commenters 32573, 35478, and 35520 argue the proposed rule ignored evidence that detailed Federal workers’ commitment to carrying out lawful administration policies. Again, OPM does not disagree that the majority of Federal employees faithfully perform their job duties. However, this does not refute the evidence of widespread policy resistance detailed in the proposed and this final rule. It can be both true that most Federal employees fulfill their job duties faithfully, and that a significant minority do not.

In a similar fashion, Commenter 35478 also argues that a Bloomberg News article published in 2017 and cited in the proposed rule does not detail policy resistance but instead details “career employees following legal requirements, implementing policy at agencies that did not have political appointees in place, or providing candid advice.” We disagree with the Commenter’s assessment. The Bloomberg News article provides numerous instances of policy resistance.¹³⁴ Even if this article did not support this proposition, the other sources cited in the proposed rule demonstrate widespread policy resistance.¹³⁵

Commenters 29987, 35446, and 35478 argue that the majority of the examples

the Reagan Years, Columbia University Press (2000).

¹³³ *Id.* at pp. 134–135; *see also id.* at p.13 (“career civil service is neither entirely responsive nor entirely resistant, but rather bureaucratic behavior under the conditions of the administrative presidency is a mixture of both. . .”).

¹³⁴ Christopher Flavelle & Benjamin Bain, “Washington Bureaucrats are Quietly Working to Undermine Trump’s Agenda,” Bloomberg News, (Dec. 18, 2017), <https://www.bloomberg.com/politics/features/2017-12-18/washingtonbureaucrats-are-chipping-away-at-trump-s-agenda> (State Department staff preserved programs to boost the economies of developing countries—at odds with Trump’s campaign pledges—by relabeling them); *id.* (NOAA employees continuing to issue reports that are at odds with Trump administration’s policies); *id.* (Pentagon staff delaying the reversal of an Obama-era directive by conducting a review of the policies).

¹³⁵ *See* 90 FR 17192–93.

¹²³ Emily Davies, et al., *Federal Workers Prepare for Cuts, Forced Relocations in Trump’s Second Term*, Wash. Post (Nov. 7, 2024), <https://www.washingtonpost.com/dc-md-va/2024/11/07/trump-dc-federal-workforce-cuts/>.

¹²⁴ “The Deep State Is Real: White House Advisor Reveals How Bureaucracy Protects ‘Its Own Interests,’” *Predicts Bureaucracy Will ‘Crush’ RFK Jr. as HHS Secretary; ‘If I Was Given an Order . . . I Would Either Try to Block It or Resign’*, O’Keefe Media Gp. (Jan. 23, 2025), <https://okeefemediagroup.com/the-deep-state-is-real-white-house-advisor-reveals-how-bureaucracy-protects-its-own-interests-predicts-bureaucracy-will-crush-rfk-jr-as-hhs-sec/>. Several commenters, including Commenter 4772 and 35478, assert that the tweet and the proposed rule mischaracterize the actual video footage attached to the tweet by claiming that the individual, if given an order he disagreed with, “would either try to block it or resign.” But regardless whether this particular employee would engage in policy resistance, there are plenty of other examples and additional information provided in the proposed rule that demonstrates widespread policy resistance.

¹²⁵ Commenter 34947 questioned this example of an EEOC administrative judge, asserting an “administrative law judge [is] a category of employee who . . . would notably not be subject to Schedule Policy/Career.” Commenter is correct that *administrative law judges* are Schedule E; however, this example is an *administrative judge*, who is not Schedule E and would potentially be eligible for Schedule Policy/Career. *See* 5 CFR 6.2.

¹²⁶ Abby Vesoulis (abbyvesoulis.bsky), Bluesky (Feb. 3, 2025, 10:12 a.m.), <https://bsky.app/profile/abbyvesoulis.bsky.social/post/3lhbtoudfz25>. OPM contacted the EEOC and obtained verification both that the email was accurate and that it was sent by an administrative judge.

¹²⁷ *See id.*

¹²⁸ *See, e.g.*, 28 U.S.C. 530D.

¹²⁹ *See U.S. Dep’t of Justice, Exec. Off. for Immigration Rev.*, 72 FLRA 622, 626–28 (Jan. 21, 2022); *U.S. Dep’t of Justice, Exec. Off. for Immigration Rev.*, 72 FLRA 733 (Apr. 12, 2022).

¹³⁰ Comment 29882, at 4.

¹³¹ The proposed rule cited a report that the Education Department’s Title IX rule was primarily drafted by political appointees during the President’s first term because key career employees would not constructively assist with drafting it. *See* 90 FR 17193. Some commenters questioned the accuracy of this report. *See, e.g.*, Comment 35478 at 72. OPM credits the Education Department’s statement as resolving this factual dispute and demonstrating the accuracy of the initial report.

¹³² Marissa Martino Golden, *What Motivates Bureaucrats?: Politics and Administration During*

describe future actions that Federal employees may or may not take, not actual past conduct. It is true that some of the examples are statements from Federal employees on what they *would* do in a specific future situation. However, to completely disregard such statements simply because they are in the context of a future situation is nonsensical. It is a universal norm to rely on and take proactive measures based on an individual's statement as to what they will do or what they think will happen. Further, as the Commenters concede, there are other examples of past policy resistance documented in the proposed rule.

Commenter 35478 also argues OPM mischaracterized the role or status of the two individuals in two of the cited examples in the proposed rule. In this regard, the proposed rule cited “a long-time federal employee’s guide to ‘useful tools’ to ‘subtly subvert . . . orders’ without outright revolting.”¹³⁶ The Commenter insists that this is a mischaracterization because the individual retired from the Federal Government. OPM disagrees. While the individual did retire, he did so after “42 years of federal service.”¹³⁷ As such, referring to this individual as a “a long-time federal employee” can hardly be said to be a mischaracterization. The Commenter similarly asserts OPM mischaracterized an example of policy resistance because the article stated the individual was a “federal employee in the Department of Justice’s grants division,”¹³⁸ while the proposed rule stated the individual was a “career Department of Justice employee with grantmaking responsibilities.”¹³⁹ Again, this is not a mischaracterization—but instead an example of paraphrasing a source, which is common practice. Commenter objects that it is not clear from the article whether this employee had policy-influencing responsibilities. However, regardless of whether this career employee personally had such responsibilities, the employee was well positioned to observe how policy-influencing career employees in the grants division reacted to policies they did not support. Whether the employee

personally slow-walked such policies, or merely observed more senior colleagues doing so, is immaterial to this rulemaking.

Commenters 19791, 28481, and 32803 critique the proposed rule for citing “sources that reflect fringe right-wing opinion and conspiracy theories.” Without identifying the specific sources they are criticizing, the Commenters allege these examples should not be relied on to justify Schedule Policy/Career. OPM disagrees with the Commenters that the sources used are somehow discredited or refuted simply because they believe the sources are associated with one side of the political spectrum. Even assuming such sources are illegitimate, for sake of argument, the remaining sources and evidence still substantiate the claim of widespread policy resistance.

Commenter 30426 contends OPM has not cited a single instance in which the administration confronted an actual instance of policy resistance and was unable to use existing chapter 43 or 75 mechanisms to take action. Commenter contends this “failure is fatal” as OPM has not explained “why the proposed solution is a necessary or appropriate response” to the problem. To the contrary, the evidence OPM has cited shows exactly this.¹⁴⁰ It shows policy resistance widely occurs, which demonstrates existing tools have proven insufficient to address the problem. Several agencies have told OPM that it occurs and they believe the rulemaking would ameliorate the problem. Support from affected agencies is strong evidence OPM has proposed an appropriate response.

Adding further currency to this issue, a recent article appearing in *Politico* highlighted the deep level of resistance to Trump Administration policies that is currently playing out among career civil

servants.¹⁴¹ The article, openly quoting many anonymous Federal employees, states: “At the end of the day, career staffers still believe that politicians come and go and it’s them who will persevere.”¹⁴² Another news outlet reported that Federal employees freely stated their intentions to resist the policies of the current Trump Administration on Reddit and to news reporters.¹⁴³

Rather than hiding their contempt for the results of a democratic election, these employees are resisting, in some cases overtly—in many more instances covertly—the policies and direction of their own leadership. To argue that this does not constitute widespread resistance to a duly elected government is untenable. Schedule Policy/Career attempts to partially address this issue for a relatively small subset of employees; those who are in the most sensitive policy-influencing positions. These positions are those that have the greatest impact on ensuring that the President’s policies and directions are properly implemented.

Further, the President has concluded that policy resistance is a significant problem and that Schedule Policy/Career is needed to address it. The President is the official constitutionally and statutorily vested with responsibility for the executive branch. Even if OPM was not convinced that policy-resistance is a serious enough problem to warrant creating Schedule Policy/Career—and the evidence discussed above independently persuades OPM that it is—OPM would credit the President’s judgment in this regard.

Accordingly, OPM believes that career employee partisanship and policy resistance is a serious problem because it undermines democracy. If the American people do not like the policies elected officials advance, they can vote for new leadership. But Americans have little recourse when career employees advance their personal agendas or undermine elected officials’ policies. They are electorally unaccountable. America was founded

¹⁴⁰ OPM further notes that the *Tales from the Swamp* report, which, OPM credits (although it is far from the sole or primary basis for this rulemaking), provides examples of policy resistance stymieing policy initiatives in the first Trump Administration. For example, Education Department officials reported career staff unwillingness to meaningfully assist with drafting regulations reduced the Department’s ability to write rules and prevented the Department from issuing rules that leadership considered good policy. Commenter did not dispute the accuracy of this account. Given that the Education Department has since verified, on the record, that political appointees had to draft priority regulations in the first Trump Administration, OPM considers this example highly credible. See James Sherk, *Tales from the Swamp: How Federal Bureaucrats Resisted President Trump*, Am. First Pol’y Inst. (Jan. 8, 2025) (*Tales from the Swamp*), at 18–19, https://www.americafirstpolicy.com/assets/uploads/files/Tales_from_the_Swamp_How_Federal_Bureaucrats_Resisted_President_Trump_-_Revised_1.8.2025.pdf.

¹³⁶ 90 FR 17192.

¹³⁷ Joe Davidson, “Many feds don’t like Trump’s program, but they’re not revolting,” Wash. Post (Feb. 1, 2017), <https://www.washingtonpost.com/news/powerpost/wp/2017/02/01/many-feds-dontlike-trumps-program-but-theyre-not-revolting>.

¹³⁸ Juliet Eilperin, Lisa Rein, & Marc Fisher, “Resistance from within: Federal workers push back against Trump,” Wash. Post (Jan. 31, 2017), https://www.washingtonpost.com/politics/resistance-from-within-federal-workers-push-backagainst-trump/2017/01/31/c65b110e-e7cb-11e6-b82f-687d6e6a3e7c_story.htm.

¹³⁹ 90 FR 17192.

¹⁴¹ Erin Schumaker, *The ‘deep state’ is proving to Trump it’s a worthy foe*, *Politico* (Sept. 14, 2025), <https://www.politico.com/news/2025/09/14/trump-federal-workers-deep-state-civil-service-00558940> (“[M]ore than 1,000 civil servants, some current, some former, published an open letter demanding [Trump appointee’s] resignation.”)

¹⁴² *Id.*

¹⁴³ Allan Smith, “‘They’ve radicalized me’: Federal workers fight back as Trump dismantles their work,” NBC News (March 2, 2025), <https://www.nbcnews.com/politics/doge/federal-workers-fight-back-trump-dismantles-work-radicalized-rcna192040> (detailing social media posts encouraging resistance).

on the principle of government by consent of the governed. Career employees who resist elected officials' policy choices undermine the foundations of American democracy.

iii. The Policy-Influencing Terms Are Not a Term of Art

Several commenters, including Commenters 0648, 23789, 26673, 30426, and 32573, argue that the use of the terms confidential, policy-determining, policy-making, and policy-advocating in 5 U.S.C. 2302(a)(2)(B)(i) and 5 U.S.C. 7511(b)(2) is a term of art that applies only to political appointees and, therefore, cannot be applied to career Federal employees to remove adverse action procedures. As explained below, OPM disagrees with this analysis of the statutory language.

Irrelevant to the Rulemaking

First, this objection misses the point OPM made in the proposed rule that whether the policy-influencing terms are a term of art that means "political appointees" or a description of particular duties is legally irrelevant.¹⁴⁴ Even assuming arguendo that the words confidential, policy-determining, policy-making, and policy-advocating are a term of art for political appointees, that construction makes no legal or practical difference. All that would mean is that E.O.s 13957 and 14151, and this rulemaking, are converting a class of positions and the employees occupying them into technically political appointments. Although this final rule is not converting career positions into political positions, nothing in Title 5 prevents the President from doing so and thereby changing an incumbent's status.

Rather, the text of 5 U.S.C. 2302(a)(2)(B) implies an inflection point at which the nature of the position changes when an appropriate authority determines it is policy-influencing. The provision states that positions covered by PPP requirements do not include positions of a policy-influencing nature, provided that the PPP occurred prior to the designation of the position as policy-influencing. This implies that positions may be declared policy-influencing both prior to and subsequent to a personnel action occurring, as well as during the tenure of a single incumbent. The Senate's decision in 1994 to adopt a substitute amendment explicitly inserting this language into a House-passed bill would be pointless if positions could only be declared policy-influencing prior to appointment. If that were the case, the

Senate's re-write of what became codified at 5 U.S.C. 2302(a)(2)(B) would necessarily mean it was adding mere surplusage to the statute. Congress did not amend 5 U.S.C. 2302(a)(2)(B) to add empty surplusage.¹⁴⁵ In 1994, therefore, Congress recognized the President's authority to declare encumbered positions policy-influencing and thereby alter their legal status. If the President were to exercise that authority, an agency could thereafter take a previously proscribed PPP against an incumbent holder of the position, such as transferring him or her based on his or her political affiliation. Congress has thus recognized that the President can convert encumbered career positions to political appointments.¹⁴⁶

At most, under these Commenters' reading of the policy-influencing terms, an executive order transferring career positions into Schedule Policy/Career would convert them into technically political appointments. However, as OPM explained in the April 2025 proposed rule, under that construction E.O. 13957, as amended, simply uses the President's constitutional and executive discretion to direct his subordinates to treat such nominally political positions as career positions, and to label and treat them as such, including by requiring agencies to establish protections against PPPs for Schedule Policy/Career employees. This is a perfectly lawful and common practice. It is well established that the President may treat technically political appointments as career positions. Consider that most offices in the executive branch subject to the Constitution's Appointments Clause are, constitutionally speaking, political appointments.

Apart from the Senate's constitutional role in the confirmation process for Presidentially Appointed, Senate Confirmed (PAS) appointments,

Congress holds extremely limited authority to substantively control the appointment of Officers of the United States. That prerogative is reserved for the executive branch. The Supreme Court has clarified as much, stating "[l]egislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement."¹⁴⁷ While the Senate may decline to confirm a nominee to a PAS position, Congress may not, for example, prohibit the President by law from nominating individuals based on political considerations. Similarly, the Supreme Court has well-clarified the President's extremely broad constitutional discretion to dismiss PAS officers extends to politically motivated dismissals.¹⁴⁸ Nor can Congress restrict the President from removing, for political reasons, inferior officers who, acting alone, wield significant administrative or policymaking authority.¹⁴⁹

The President and Congress nonetheless have the discretion to treat Federal offices that are, as a constitutional matter, political appointments as career positions, label them as such, and often have done both. For example, ambassadors are constitutionally obligated to be PAS appointments.¹⁵⁰ But there is widespread practice of treating some ambassadorships as career positions, appointing career foreign service officers to serve.

Similarly, under 22 U.S.C. 3942(a)(1) most Foreign Service positions are PAS appointments. Constitutionally, Congress may not require particular screening procedures before the President submits nominations for PAS offices to the Senate. The President has plenary authority to nominate whomever he deems best. Nor can Congress require the President to delegate authority to dismiss PAS officeholders to a nonpartisan appeals board. Purely executive PAS officials serve at the pleasure of the President.¹⁵¹

¹⁴⁵ See *United States v. Menasche*, 348 U.S. 528, 538–39 (1955), (citing *Inhabitants of Montclair Tp. v. Ramsdell*, 107 U.S. 147, 152 (1883) ("It is our duty 'to give effect, if possible, to every clause and word of a statute[.]'")).

¹⁴⁶ In the April 2024 final rule OPM argued that 5 U.S.C. 2302(a)(2)(B) had implications only for employee relief from PPPs and not chapter 75 actions. See 89 FR at 25025. Nonetheless, OPM recognizes that this statutory amendment presupposes that the President can convert career positions, and the incumbents in them, into political appointees by exempting them from prohibitions on discrimination based upon political affiliation. See 5 U.S.C. 2302(a)(2)(B) (excluding from coverage any position "excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration").

¹⁴⁷ *Buckley v. Valeo*, 424 U.S. 1, 139 (1976) (quoting *Springer v. Philippine Islands*, 277 U.S. 189, 202 (1928)).

¹⁴⁸ *Myers v. United States*, 272 U.S. 52, 176 (1926) ("[I]t therefore follows that the Tenure of Office Act of 1867, in so far as it attempted to prevent the President from removing executive officers who had been appointed by him by and with the advice and consent of the Senate, was invalid, and that subsequent legislation of the same effect was equally so.").

¹⁴⁹ See *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 238 (2020) (*Seila Law*).

¹⁵⁰ See U.S. Const. Art. II, Sec. II, Cl. II.

¹⁵¹ See, e.g., *Humphrey's Executor v. United States*, 295 U.S. 602, 631–32 (1935) (*Humphrey's*).

However, Congress has passed laws, to which Presidents have voluntarily adhered, extensively regulating selection of nominees to, and dismissals from, PAS Foreign Service positions, even going so far as to label some as “career members” of the Foreign Service.¹⁵² The executive branch has routinely treated technically political PAS Foreign Service positions as career appointments because successive Presidents have found that doing so helps them carry out their constitutional responsibilities. This, however, is an act of Presidential discretion, not legal obligation. Congress may not enforce these restrictions except through the Senate’s advice and consent role in the confirmation process. Technically, PAS Foreign Service positions remain political appointments,¹⁵³ though both Congress and the President have found it advantageous to treat and describe them as career positions.

If the President wishes to appoint and dismiss officials in technically political positions without regard to political affiliation or personal political views, he is free to do so (and to direct his subordinates to do so). The fact that the President can legally appoint and vacate positions on a political basis does not mean that he must do so. The President can also label formally political positions as career positions to make it clear how he wants his subordinates to treat them. Such practices are not uncommon.

Consequently, even if the policy-influencing terms were a term of art that described political appointments, the President could still designate these positions as Schedule Policy/Career to make it clear subordinate officials are to fill and vacate them without regard for

political affiliation. This is no more legally problematic than Congress and the executive branch designating PAS officers as “career members” of the Foreign Service¹⁵⁴ notwithstanding the President’s plenary constitutional authority to nominate candidates for and dismiss incumbents from such positions. As a result, whether the policy-influencing terms technically designate political appointments is administratively and practically irrelevant.

Even if the commenters are correct that the policy-influencing terms are a term of art referring exclusively to political appointments, the commenters have not explained how this makes any difference to the rule’s legality or the administration’s ability to execute it. Specifically, if the policy-influencing terms are descriptors of positions with a nexus to confidential duties or policy, then, under the E.O.s and Notice of Proposed Rulemaking, positions moved into Schedule Policy/Career remain career positions. If the policy-influencing terms are a term of art meant to refer to political appointees, then, under the E.O.s and the proposed rule, positions moved into Schedule Policy/Career are converted into technically political positions that by Presidential directive will be filled and vacated without regard to political affiliation. These positions will be labeled and treated as career positions, similar to career members of the Foreign Service whose PAS positions are technically constitutionally political but are, in practice, treated as career positions. In sum, the distinction between the two interpretations of the policy-influencing terms is substantively meaningless.

Textual Analysis

Several commenters took the position that “confidential, policy-determining, policy-making, or policy-advocating” is a term of art which refers solely to political appointees. As discussed above, accepting this view has no legal or practical effect on the rule’s validity. Moreover, as OPM explained in the proposed rule, the best interpretation of the CSRA is that each of the policy-influencing terms bear their constituent meanings. That is Congress used the terms “confidential,” “policy-making,” “policy-determining,” and “policy-advocating” to describe the types of positions that are eligible for the 5 U.S.C. 2302(a)(2)(B) and 7511(b)(2) exceptions.

Multiple canons of statutory construction point to this conclusion.

First, meaningful variation in statutory language is presumed to entail a change in meaning. Congress used specific language in the CSRA to explicitly distinguish between career and political appointees in the SES, namely “career” and “noncareer” appointments.¹⁵⁵ In subchapter V of chapter 75 Congress expressly gave all “career” SES officials adverse action procedures while excluding noncareer officials.¹⁵⁶ Congress separately used quite different language—namely the policy-influencing terms—to describe exceptions from adverse action appeals for non-SES employees in subchapter II.¹⁵⁷ Canons of statutory construction indicate this shift in language implies a shift in meaning; the policy-influencing terms are not synonyms for “noncareer.” OPM is mindful of the Supreme Court’s directive that “when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.”¹⁵⁸

Second, under the presumption of consistent usage the “normal rule of statutory construction [is] that identical words used in different parts of the same act are intended to have the same meaning.”¹⁵⁹ This matters because Congress used the policy-influencing terms elsewhere in the CSRA in a manner that is inconsistent with their being a term of art for political appointees. In 5 U.S.C. 3132(a)(2)—also part of the CSRA—Congress defined SES positions as those graded above GS-15 that “direct[] the work of an organizational unit; [are] held accountable for the success of one or more specific programs or projects; monitor[] progress toward organizational goals and periodically evaluates and makes adjustments to such goals; or otherwise exercise[]

Executor) (“the Myers decision, affirming the power of the President alone to make the removal, is confined to purely executive officers” (citing *Myers*, 272 U.S. 52)). The Supreme Court has recognized an exception to the rule that PAS officials serve at the pleasure of the President, holding that it does not apply to officials who lead multimember agencies that do not wield substantial executive power. *See id.*; *Seila Law*, 591 U.S. at 198. The continuing validity of this exception is in question as the Supreme Court recently granted certiorari for the purpose of reconsidering *Humphrey’s Executor*. *See Trump v. Slaughter*, No. 25A264, No. 25–332, 2025 WL 2692050 (U.S. Sept. 22, 2025). Regardless, the *Humphrey’s Executor* exception is inapplicable to PAS foreign service members.

¹⁵² *See* 22 U.S.C. 3942(a)(1); *see also* 22 U.S.C. 3946 (“[T]he Secretary shall decide whether to recommend to the President that the candidate be given a career appointment under section 3942 of this title.”); 22 U.S.C. 4137(b)(4) (giving the Foreign Service Grievance Board the authority to reinstate a removed foreign service officer).

¹⁵³ *See* 22 U.S.C. 3942(a)(1) (“The President may, by and with the advice and consent of the Senate, appoint an individual . . . as a career member of the Senior Foreign Service, or as a Foreign Service officer.”).

¹⁵⁵ *See* 5 U.S.C. 3132 and 3134.

¹⁵⁶ *See* 5 U.S.C. 7541(1) (defining “employee” as “a career appointee in the Senior Executive Service”); 5 U.S.C. 3132(a)(4) (defining “career appointee” as “an individual in a Senior Executive Service position whose appointment was based on approval by the Office of Personnel Management of the executive qualifications of such individual”).

¹⁵⁷ The fact that the CSRA uses terms whose ordinary meanings describe officials who can and cannot expect to stay in Government across presidential administrations, namely “career” and “noncareer”, further suggests Congress saw no need to use a term of art to distinguish political appointees from career officials. This reinforces the conclusion that the policy-influencing terms bear their ordinary, constituent meanings.

¹⁵⁸ *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004) (quoting 2A N. Singer, *Statutes and Statutory Construction* § 46:06, p. 194 (6th rev. ed. 2000)).

¹⁵⁹ *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570 (1995) (quoting *Dep’t of Revenue of Ore. v. ACF Indus., Inc.*, 510 U.S. 332, 342 (1994) (internal quotation marks omitted)).

¹⁵⁴ *See id.*

important *policy-making, policy-determining, or other executive functions*.”¹⁶⁰ In 5 U.S.C. 3134(b), Congress prohibited more than 10 percent of SES positions from being filled by noncareer (e.g., political) appointees.¹⁶¹ Consequently, at least nine-tenths of SES positions—which are definitionally “policy-making” or “policy-determining” executives—must be held by career officials.

Congress’s decision to use “policy-making” and “policy-determining” to define a class of employees which must be at least 90% career employees is incompatible with those terms being merely subcomponents of a single term of art which can refer only to political appointees. Moreover, the presumption of consistent usage most strongly applies to terms appearing in the same enactment, as these did.¹⁶² Congress’s use of the terms “policy-making” and “policy-determining” to describe career positions in one part of the CSRA strongly suggests these terms are not mere synonyms for the different term used to describe political appointees elsewhere in the statute.

Looking at the CSRA as a whole makes construing the policy-influencing terms as a specialized term of art describing only political appointees untenable. Congress knew how to categorically grant all career employees adverse action procedures in chapter 75 but used quite different language when drafting subchapter II of that chapter. Congress also used the policy-influencing terms employed in subchapter II to separately describe primarily career positions. The better reading of 5 U.S.C. 7511(b)(2) is that the terms in the expression “confidential, policy-determining, policy-making, or policy-advocating” have their ordinary, plain English meaning and describe positions involved in determining, making, or advocating for policy, or confidential positions. Such positions

include but are not limited to political appointments.

This construction gives the same meaning to the terms “policy-making” and “policy-determining” throughout the CSRA while recognizing that the terms “career” and “noncareer” have an orthogonal meaning, referring to civil service and political appointments respectively. This interpretation also recognizes that Congress specifically gave adverse action procedures to career SES members and denied them to noncareer SES appointees, while using very different language in the section of chapter 75 governing the competitive and excepted services. These factors indicate the policy-influencing exclusion from subchapter II should not be read as a term of art that applies only to political appointees.

Commenters raised various objections to this conclusion and argued the policy-influencing terms should be read as a singular term of art whose meaning is divorced from its constituent terms. They assert that these terms mean only and exclusively “political appointee.” OPM disagrees with these comments, for the reasons set forth below.

Otherwise Exercises

Commenter 29987 suggests that 5 U.S.C. 3132(a)(2) should be read to define SES employees to include officials above the GS–15 level who exercise policy-making, policy-determining, or executive functions, but that this does not imply that officials who perform the other duties set forth in that subsection have policy-making or policy-determining functions. In Commenter’s view, the use of “policy-making” and “policy-determining” in section 3132(a)(2) supplies additional criteria for defining SES positions but does not imply the other enumerated criteria are policy-determining or policy-making functions.

OPM respectfully disagrees. Commenter’s construction would make sense if 5 U.S.C. 3132(a)(2)(E) did not describe SES positions as “*otherwise* exercise[ing] important policy-making, policy-determining, or other executive functions” (emphasis added). In English, the use of the term “otherwise” in this manner indicates that the functions that precede the “otherwise” are of the same type as those that follow it. Congressional use of “otherwise” implies the criteria such as “[being] held responsible for the success of one or more specific programs or projects” or “monitor[ing] progress towards organizational goals and periodically evaluat[ing] and mak[ing] appropriate adjustments to such goals” are

important policy-determining, policy-making, or executive functions.

Contrary to Commenter’s suggestion, OPM also believes the functions expressly enumerated in section 3132(a)(2) cannot be characterized as only “executive” functions with no connection to policy. That construction would render the use of the terms “otherwise” “policy-making” and “policy-determining” in section 3132(a)(2)(E) mere surplusage. If none of the expressly enumerated functions are policy-making or policy-determining, it would make no sense to describe an employee as “otherwise” exercising such policy functions. Further, OPM believes it is natural to consider responsibilities such as making adjustments to organizational goals as involving policy-making and not purely executive functions.

Location of 7511(b)(2) Does Not Limit Policy-Influencing Terms to Political Appointees

Commenter 30426 argues that 5 U.S.C. 7511(b)(2) was originally one of only two exclusions in section 7511(b), both of which only addressed political appointee positions. In its current form, paragraph (b)(2) is sandwiched between two other political appointee exclusions, one for PAS positions, and one for PA positions. This simply shows that Congress intended the exception to apply to political appointees, as it surely does.

OPM does not dispute that 5 U.S.C. 7511(b)(2) was added largely for the purpose of allowing exceptions for political appointees from adverse action appeals. However, OPM asserts that the exception can cover both political appointees and some policy-influencing career employees. The addition of a third exception presupposes congressional intent that the other two were insufficient to cover the universe of appointees to whom Congress intended to apply the exception. Commenter 30426 does not explain how this placement is an argument for construction of 5 U.S.C. 7511(b)(2) to exclusively cover political appointees, rather than it covering political appointees as well as a broader potential application subject to discretion to exercise that application.

Congressional Purpose Does Not Override Statutory Text

Commenter 30426 similarly argues that in the CSRA itself, Congress declared that one of its purposes is to ensure that Federal employees “receive appropriate protections through increasing the authority of the MSPB in

¹⁶⁰ 5 U.S.C. 3132(a)(2) (emphasis added).

¹⁶¹ See 5 U.S.C. 3134(b) (“The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.”).

¹⁶² See *United States v. Castleman*, 572 U.S. 157, 174 (2014) (Concurring Opinion of Justice Scalia) (“[T]he presumption of consistent usage [is] the rule of thumb that a term generally means the same thing each time it is used[,]” and “is most commonly applied to terms appearing in the same enactment.”); *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005) (“[T]he normal rule of statutory interpretation [is] that identical words used in different parts of the same statute are generally presumed to have the same meaning.”). See also *Azar v. Allina Health Servs.*, 587 U.S. 566, 574 (2019) (“This Court does not lightly assume that Congress silently attaches different meanings to the same term in the same or related statutes.”).

processing hearings and appeals affecting [f]ederal employees.”

OPM concurs in the view that the CSRA was intended to provide MSPB coverage, which it will continue to provide to the vast majority of employees under this reading. That purpose can and does coexist with the statutory exceptions from MSPB coverage, including those for policy-influencing positions. As the Supreme Court has clarified, “[i]ndeed, it is quite mistaken to assume . . . that ‘whatever’ might appear to ‘further[]’ the statute’s primary objective must be the law.”¹⁶³ Commenter’s other arguments that CSRA adverse action exemptions should be read narrowly in light of other sections, including 2302(a)(2)(B)(i) have the same answer: OPM is reading the restrictions narrowly, just not as narrowly as the Commenter suggests. Further, 5 U.S.C. 2302(a)(2)(B)(ii) permits the President to except “any position”—not just policy-influencing positions—from PPP prohibitions if he determines it necessary and consistent with principles of good administration. If giving the President broad discretion to except any position he deems necessary from PPP prohibitions is consistent with the broader purpose of the CSRA, and 5 U.S.C. 2302, then reading 7511(b)(2) to authorize the President to except just policy-influencing career positions is also consistent with the CSRA’s purpose.

OPM’s Interpretation Is Consistent With the CSRA and Other Title 5 Authorities

Commenters 16670, 23789, 30426, and others argued that construing the policy-influencing terms to bear their ordinary, constituent meaning would be “incoherent” because it would give members of the SES, who wield more authority over policy, stronger removal protections than subordinate employees in the General Schedule covered by subchapter II with less authority over policy. They criticize OPM for failing to explain why Congress would make an “illogical” choice to create a “giant” exception from adverse action procedures for lower-ranking employees but not the more powerful senior executives who supervise them.

As OPM explained in the proposed rule, this objection misses statutory SES management flexibilities. Agency heads can reassign SES members at-will¹⁶⁴ and have broad discretion to demote them from the SES for poor performance

without external appeals.¹⁶⁵ The President and OPM can also take agencies out of the SES and create alternative senior executive management systems.¹⁶⁶ Section 7511(b)(2) of 5 U.S.C. would then allow the President to exclude employees in those alternative systems from chapter 75.¹⁶⁷ Congress could have easily seen the need for greater authority to remove policy-influencing employees below the SES precisely because agencies do not have the same degree of management flexibility. Congress could have also drafted section 7511(b)(2) more expansively in part to ensure the President could make senior executives entirely at-will if he takes their agencies out of the SES.¹⁶⁸ The commenters also failed to consider that the President proactively exercised his executive authority to extend protections from PPPs to Schedule Policy/Career positions by requiring agencies to establish and enforce internal policies protecting these career employees from, for example, whistleblower reprisal.

Commenter 30426 rejected this analysis as “absurd” because it suggests Congress’s intricate work crafting the CSRA, with the creation of the SES the crown jewel of that work, is meant only to “cohere” in agencies that are excepted from the SES. Commenter 30426 also objected that this would imply Congress gave the President the authority to fire a single member of the SES, but only if he excepted the entire agency from the SES system, a conclusion the Commenter similarly described as absurd. Commenter 30426 further argued that SES management flexibilities are not as significant as OPM explained, reasoning that reassignment at will and unappealable performance-based demotions of SES members are not comparable to at-will dismissal of sub-SES employees. The Commenter uses this observation to buttress the argument that it would be illogical to construe the CSRA to give the President more flexibility over junior employees than senior executives.

On the contrary, OPM believes construing 7511(b)(2) to allow the

President to make policy-influencing excepted and competitive service employees at-will makes rational sense. Congress could reasonably have expected that heightened SES management flexibility would generally be sufficient to address performance issues or policy resistance, while recognizing that in some cases they would not. In those cases, Congress left the President backstop authority to exclude an agency or agency subunit entirely from the SES and use 7511(b)(2) to make such senior executives at-will employees. Congress may have expected this backstop authority to be the exception, not the rule. But construing the CSRA to provide such backstop authority, while expecting it would rarely need to be used, is a coherent construction of the statute.

In addition, employees in the competitive and excepted services can appeal performance-based demotions to the MSPB.¹⁶⁹ SES members cannot.¹⁷⁰ These are considerably greater management flexibilities than Congress has given agencies over sub-SES officials.¹⁷¹ Congress could have rationally expected SES management flexibilities would generally suffice and not see the need to provide for at-will SES removals in the mine run of agencies that the President elects to keep in the SES.¹⁷²

Moreover, OPM notes that 7511(b)(2) authority only applies to the small subset of sub-SES employees in policy-influencing positions. Under the CSRA the rule is that agencies have more management authority over SES members than the vast majority of competitive and excepted service employees. It could easily be rational, rather than illogical, for Congress to

¹⁶⁹ See 5 U.S.C. 4303(e), 7513(d).

¹⁷⁰ See 5 U.S.C. 4312(d), 4314(b).

¹⁷¹ The Supreme Court similarly recognized these SES management flexibilities as noteworthy in evaluating the constitutionality of removal protections for officers exercising executive power. *Free Enterprise Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 506–07 (2010) (noting that “members of the Senior Executive Service may be reassigned or reviewed by agency heads (and entire agencies may be excluded from that Service by the President)” (citing 5 U.S.C. 3132(c), 3395(a), 4312(d), 4314(b)(3) and (c)(3)). *Free Enterprise Fund* also cited the fact that “[s]enior or policymaking positions in government may be excepted from the competitive service to ensure Presidential control” as another factor distinguishing the rules governing the civil service from the “significant and unusual protections from Presidential oversight” enjoyed by the board members at issue in *Free Enterprise Fund*. *Id.* at 506 (citing 5 U.S.C. 2302(a)(2)(B), 3302, 7511(b)(2)).

¹⁷² Indeed, any interpretation of the CSRA or any other law that restricted the President from removing an officer with significant “policymaking or administrative authority” would be constitutionally suspect. See *Seila Law*, 591 U.S. at 218.

¹⁶³ *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (citing *Rodriguez v. United States*, 480 U.S. 522, 526 (1987)).

¹⁶⁴ See 5 U.S.C. 3395.

¹⁶⁵ See 5 U.S.C. 4312(d) and 4314(b)(3).

¹⁶⁶ 5 U.S.C. 3132(c).

¹⁶⁷ 5 U.S.C. 7511(b)(2) (excluding from chapter 75 any position that “has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by (A) the President for a position that the President has excepted from the competitive service; (B) the Office of Personnel Management for a position that the Office has excepted from the competitive service”).

¹⁶⁸ For example, unlike SES members, competitive and excepted service employees can appeal removals based on unacceptable performance to the MSPB. See 5 U.S.C. 4303(e).

conclude the President needed heightened management authority over the small subset of policy-influencing employees covered by 5 U.S.C. 7511(b)(2).

OPM recognizes that the 7511(b)(2) exception was enacted for the purpose of permitting the executive branch to except political appointees from adverse action procedures. It has consistently been applied for that purpose. However, the text Congress used to draft this exception makes positions eligible based on the types of duties they perform—not the political nature of the incumbent’s appointment. Nothing in the text of 7511(b)(2) restricts its application to employees hired on a political basis, or to employees who are expected to be dismissed upon a change of administration. Some members of Congress may have assumed that the exception would only apply to political appointees, but nothing in the enacted text of subchapter II requires that view. It is the text of statutes Congress enacts that binds as law.¹⁷³

Relatedly, SES members generally supervise organizational units. Thus, the authority granted in 5 U.S.C. 3132(c) to remove an agency “unit” will generally suffice to allow OPM and the President to except a single individual from the SES. Contrary to Commenter 30426’s statement, it is generally unnecessary to except an entire agency from the SES to hold accountable a single SES member.

OPM’s Interpretation Is Consistent With 5 U.S.C. 2302

Commenter 30426 argues that OPM’s argument that the terms “policy-making” and “policy-determining” in 5 U.S.C. 3132(a)(2) have the same meaning as in 5 U.S.C. 2302(a)(2)(B) and 7511(b)(2) ignores the fact that Congress expressly included career SES in the coverage of 5 U.S.C. 2302, even though it excluded “confidential, policy-determining, policy-making or policy-advocating” excepted service positions from that section. Commenter contends that if the words used in 5 U.S.C. 3132 had the same meaning as the distinct term of art in 5 U.S.C. 2302(a)(2)(B)(i), then the express coverage of career SES members by 5 U.S.C. 2302 would make

little sense, as all SES members would be expressly included by section 5 U.S.C. 2302(a)(2)(B), but then excluded under 5 U.S.C. 2302(a)(2)(B)(i).

Commenter’s argument in this regard misses the fact that SES positions—both career and noncareer—are definitionally not in the excepted service but exist in a separate statutory category. Section 2103(a) of Title 5, U.S. Code, provides that the “excepted service” are those “civil service positions which are not in the competitive service or the Senior Executive Service.” Section 2302(a)(2)(B)(i) of Title 5, U.S. Code, does not apply to SES members, because it covers “any position which is excepted from the competitive service because of its confidential, policy-determining, policy-making or policy-advocating character.” In this way, SES positions are not “excepted from the competitive service,” but rather exist within a separate service.

Consequently, there is no contradiction as Commenter 30426 proposes. Section 2302(a)(2)(B) includes many positions, including career SES, under protections from PPPs, while 5 U.S.C. 2302(a)(2)(B)(i) excludes policy-influencing positions in the excepted service from coverage under 5 U.S.C. 2302. That exclusion for policy-influencing excepted service positions does not apply to any SES positions because they are not part of the excepted service, no matter the policy-nature of their duties. OPM further notes that Schedule Policy/Career will not apply to the SES, which operates under separate statutory authority. Consequently, the concerns expressed by Commenters 26624 and 28202 for SES employees are also inapplicable.

E.O. 13957 and the Final Rule Do Not Expand the Meaning of the CSRA

Commenter 30426 criticizes Section 5(c) of E.O. 13957, as amended, and OPM’s January 2025 Memorandum, as atextually expanding the use of “confidential, policy-determining, policy-making or policy-advocating” to include duties that are policy-related and develop or formulate policy. Commenter 30426 points to other descriptors used in the E.O. to describe policy-influencing positions, namely policy “viewing,” “circulating,” and “working,” and concludes that the E.O. expands the statutory terms under 5 U.S.C. 7511(b)(2) towards covering those involved in the daily administration of Government.

Commenter 30426 misreads the categories in subsection 5(c) of E.O. 13957 and OPM’s January 2025 Memorandum requiring agencies to focus analysis on certain types of

positions. Commenter 30426 construes these categories as definitions of the policy-influencing terms. As explained in this rule, they are not definitions, but rather are guideposts to focus agency analysis and recommendations on positions that are more likely to be policy-influencing. It is not the case that every position that falls within these criteria will be included in Schedule Policy/Career, nor is it the case that every position not described by these guideposts will not be held to be policy-influencing. OPM’s January 2025 Memorandum expressly advised agencies that these guideposts were not controlling but merely factors to consider. This guidance encompasses employees who have access to confidential, deliberative policy information by virtue of their close working relationship with agency leadership and management, given GS-13 and higher are the management grades in the Federal Government. While these positions may not, in an agency’s determination, fall within the scope of the terms policy-making or policy-determining, they may execute confidential duties within the bounds of 5 U.S.C. 7511(b)(2). Commenter 30426 provides no argument as to why such positions should not be considered confidential.

Commenter 30426’s conclusion is similarly confusing. Commenter 30426 does not explain how authority over the policies governing the daily administration of government are *not* policy-making authorities in and of themselves. Determining the manner in which agencies carry out their work is government policy. Agencies have substantial discretionary authority to determine how the government carries out its statutory responsibilities, and that authority is the authority to make policy if not determine it. In lay terms, the “how” and the “what” of a policy are interdependent and, in fact, inextricably linked considerations.

Commenter 30426 similarly argues that E.O. 13957, as amended, drifts away from the statutory focus on the “character” of a position towards the location of a position within an organization when, for example, it purports to cover positions situated in an executive secretariat. However, Executive Secretariat positions are often heavily involved with circulating draft proposals and documents with agency heads. Many, though not necessarily all, of them are appropriately considered confidential.

¹⁷³ See *Diamond v. Chakrabarty*, 447 U.S. 303, 315 (1980) (“[A] statute is not to be confined to the ‘particular application[s] . . . contemplated by the legislators.’” (quoting *Barr v. United States*, 324 U.S. 83, 90 (1945))); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998) (“[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.”); see also *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 653 (2020) (“[T]he limits of the drafters’ imagination supply no reason to ignore the law’s demands.”).

All Supervisors Are Not Included in Schedule Policy/Career

Commenter 30426 and others take issue with OPM's January 2025 Memorandum that provides guideposts to agencies to implement E.O.s 13957 and 14171. Commenter 30426 argues that by including the 5 U.S.C. 3132(a)(2) terms defining SES positions in the January 2025 Memorandum, OPM has effectively advanced a view that the CSRA authorizes exclusion of nearly all supervisory positions in Government. Commenter 30426 points to the separate probationary period for new supervisors authorized by Congress in 5 U.S.C. 3321(a)(2).

The CSRA defines SES positions as positions above the GS-15 level that perform certain enumerated functions or "otherwise exercise[] important policy-determining, policy-making, or other executive functions."¹⁷⁴ From these enumerated functions the January 2025 Memorandum did not include "supervising the work of employees other than personal assistants,"¹⁷⁵ and thus does not include most line supervisors who perform executive functions without the same degree of responsibility for agency policy. However, it included executives whose responsibilities include "directing the work of an organizational unit", "being held accountable for one or more specific programs or projects", and "monitoring progress toward organizational goals, and periodically evaluating and making appropriate adjustments to such goals."¹⁷⁶ Such duties go beyond executive supervision to involvement in making or setting the policies of an agency. Congress considered these to be important policy-determining and policy-making functions. Many agency executives below the level of the SES who perform these functions thus meet the criteria for Schedule Policy/Career. Further, the supervisory probationary period remains relevant because most supervisors do not exercise these higher-level functions. Generally, only more senior executives in the rungs immediately below the SES meet these criteria, while line supervisors do not.

While SES members will not be included in Schedule Policy/Career because they are appointed to a service separate and distinct from the competitive and excepted services, Schedule Policy/Career complements the SES structure and ensures those non-SES personnel executing similar duties are appropriately accountable to

the President. Thus, Commenter 30426's complaint is with congressional judgment, not OPM's guidance on positions to review that follows these statutory guideposts.

OPM's Interpretation Is Consistent With the Use of Policy-Influencing Terms in Individual Agencies' Organic Statutes

Commenter 30426 also points to several other statutory provisions within title 5 that do not define excepted service policy-influencing positions as political appointments *per se* but that classify such employees along with political appointees for certain purposes. For example, Commenter 30426 discusses 5 U.S.C. 5753(a)(2)(C) and 5 U.S.C. 5754(a)(2) recruitment and retention bonuses. They do not apply to Presidential appointees, noncareer SES, or a "position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character." In addition, Commenter raises the Intergovernmental Personnel Act, which authorizes the head of a Federal agency to detail an employee to state and local governments so long as employees commit to serving in their original position for the same length of time. Under the Intergovernmental Personnel Act, Congress excluded employees in a confidential, policy-making, policy-determining, or policy-advocating position along with noncareer SES and temporary SES personnel.¹⁷⁷ Commenter argues these laws show policy-influencing positions were treated the same as political appointees (and different from career employees) and that this sheds light on interpreting the CSRA. Commenter 30426 further argues, "applying this term to career civil servants would produce an absurd outcome: career officials who occupy positions of a "confidential, policy-determining, policy-making or policy-advocating" character would be ineligible for recruitment or retention bonuses, whereas all other career officials could receive them."¹⁷⁸ This rulemaking addresses these arguments in the next section.

Commenter 30426 also argues that various Federal laws define political appointees as individuals occupying policy-influencing positions in the excepted service and that is relevant to interpreting the CSRA. In support, Commenter 30426 asserts that the Supreme Court's decision in *United States v. Fausto* compels OPM to interpret 5 U.S.C. 7511(b)(2) and

2302(a)(2)(B)(i) in a manner consistent with the definitions these other statutes supply. They purportedly reflect the consistent understanding of Congress that the term of art "confidential, policy-determining, policy-making, or policy-advocating" applies only to political appointee positions. In other words, Congress defined the concept of a political appointee in other laws based on the understanding of the term of art.

But there is no inconsistency between these statutes and OPM's construction of the policy-influencing terms. As discussed previously, the textual interpretation and statutory analysis, as well as the history of these terms' usage, which Commenter supplies and is discussed in a later section, reinforces the conclusion that the meaning of these terms at the time of the CSRA and the DPAA was clear and the terms bear their ordinary meaning: positions involved in determining, making, or advocating for policy, or confidential positions. At the same time, as a matter of Presidential discretion, the executive branch limited the application of the 7511(b)(2) exception to political appointments, principally Schedule C positions.¹⁷⁹ Subsequently, Congress passed a handful of provisions scattered across the U.S. Code that define policy-influencing positions as political appointments for certain narrow applications. This occurred because, until 2020, the policy-influencing exception had only been applied to political appointments. So at the time these laws were enacted, the terms only described political appointments. At the same time, Congress expressly limited the application of these definitions to whichever inferior subdivision of Title 5 was at issue, using limiting language like "for purposes of this section" or "this subsection." At no point did Congress provide a global definition across Title 5 for the meaning of those terms or interpret those terms for purposes of 7511(b)(2). Rather, Congress legislated against the backdrop of contemporary executive branch practice. Construing those terms now to implicitly provide a global definition of the policy-influencing terms for Title 5 as a term of art would construe these laws to implicitly and retroactively modify the scope of 7511(b)(2)—ignoring Congress's direct statutory command that these are to be narrow

¹⁷⁹ Notably, Presidential discretion has resulted in many, but not all, policy-influencing positions being placed into the excepted service. Some have been so-designated by agency heads. See *Stanley v. Gonzales*, 476 F.3d 653, 658–59 (9th Cir. 2007) (evaluating the Attorney General's redesignation of a position as "confidential or policy-making").

¹⁷⁴ See 5 U.S.C. 3132(a)(2).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ 5 U.S.C. 3372(a)(1).

¹⁷⁸ Comment 30426, at 16.

and local definitions that do not control across all of Title 5.¹⁸⁰

Additionally, each of the four instances Commenter 30426 cites of policy-influencing positions being defined as political appointees are compatible with E.O.s 13957 and 14171, as well as this rulemaking. First, 7 U.S.C. 6992(e)—passed by Congress and signed into law in 2018—prohibits any “political appointee” from being employed in the U.S. Department of Agriculture National Appeals Division, defining the term political appointee, “in this subsection” to mean, *inter alia*, “a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.” This provision prohibits the President from using 7511(b)(2) to remove adverse action appeals from employees within the Appeals Division. It does not purport to define any employees holding policy-influencing positions outside the Appeals Division as political appointees. By its own terms, it has no bearing on that question.

Second, 5 U.S.C. Chapter 98 provides the National Aeronautics and Space Administration (NASA) with a variety of compensation flexibilities, such as recruitment and retention bonuses, and leave accrual enhancements. Section 9803(c)(2) of Title 5, U.S. Code—enacted in 2004—prohibits exercising these flexibilities with respect to political appointees, defining that term, “For purposes of this subsection,” to mean, *inter alia*, “a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.” This means that NASA could not use these pay flexibilities for either Schedule C, Schedule G, or Schedule Policy/Career, or any other position covered under 5 U.S.C. 7511(b)(2). Congress passed this prohibition because at the time of its enactment, only political appointees were covered by that exception. However, the inability to use certain pay flexibilities available would not prevent NASA from filling or vacating section 7511(b)(2) positions on a nonpartisan basis, nor would doing so create any conflicts with E.O.s 13957 and 14171. Rather, this section cabins off the application of compensation flexibilities within NASA. Nothing else.

Third, 6 U.S.C. 349(d)—enacted in 2016—authorizes the Secretary of DHS

to appoint a Deputy Under Secretary to support the Under Secretary for Strategy, Policy, and Plans, but in exercising that discretion, requires the Secretary to appoint a career employee to the position, defining a career employee as a non-political appointee and defining a “political appointee” “for purposes of [this] paragraph” as “any employee who occupies a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.”¹⁸¹ This prohibition simply prevents the President from applying the section 7511(b)(2) prohibition to a single position at the DHS. It does not, and on its own terms does not attempt to, limit the application of section 7511(b)(2) elsewhere within DHS. In addition, it does not purport to apply a generally applicable definition of career employee or political appointee. Under 6 U.S.C. 349(d)(3) a noncareer SES member can be considered a “career employee” and not a “political appointee” because SES positions are not “excepted from the competitive service” and thus are outside the definition of political appointees. Looking to this subsection to interpret the scope of political appointments or delineate political from career positions in the Federal workforce would be highly problematic. This is no doubt one reason Congress expressly said not to do so.

Fourth, 38 U.S.C. 725, enacted in 2017, requires the Secretary of Veterans Affairs (VA Secretary) to give specific performance evaluations to each “political appointee” in the VA that covers certain congressionally mandated metrics, such as engaging and motivating employees, and recruiting and retaining well-qualified individuals in the VA. “In this section the term ‘political appointee’ means an employee of the Department who holds . . . a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.”¹⁸² This language requires the VA Secretary to evaluate employees with important policy responsibilities based on categories of interest to Congress. This section also does not purport to generally define political appointees, as it excludes PAS positions and Presidentially Appointed (PA) positions, of which VA has both. PAS and PA positions are obviously political appointments, but not in scope for the purposes Congress intended section 725

to cover, so they are not covered by the definition (though the VA Secretary has limited authority to review the performance of Presidential appointees). Section 725 of title 38, U.S. Code, should therefore not be read to define the 7511(b)(2) exception as limited to political appointees any more than it should be read to declare PAS and PA appointees not to be political appointees. It simply does not speak to that question, a view Congress expressly endorsed by cabining off the scope of the definition exclusively to 38 U.S.C. 725.

Additionally, Congress elsewhere defined “political appointee” more narrowly to only encompass Schedule C appointees. For example, 49 U.S.C. 106(f)(5)(C) provides that political appointee, for the purpose of operations of the Federal Aviation Administration, is to mean any individual who is “employed in a position in the executive branch of the Government in a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.” A note to 5 U.S.C. 3101 (Pub. L. 114–136, sec. 4, 130 Stat. 305, March 18, 2016) defines political appointees for purposes of reports on officials burrowing into career positions as, in relevant part, “a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations.” So, it is not the case, as Commenter 30426 suggests, that Congress consistently uses the policy-influencing terms as a unified term of art to define political appointees. Rather, in some sections, Congress specifically described Schedule C positions and not the broader policy-influencing phrase. These are local definitions and should be treated as such.

Historical Context Supports OPM’s Interpretation

Commenters 23789, 30055, 30426, and others presented arguments that historical context shows the policy-influencing phrase “positions of a confidential, policy-determining, policy-making, or policy-advocating character” is a singular term of art. They pointed to legislative history, MSPB decisions, amicus briefs, and statements of legislators, among other sources, to conclude that Congress used the policy-influencing terms to describe political appointments. Commenters conclude that it is a fallacy to focus on the meaning of the distinct component terms of this term of art, and that its

¹⁸⁰ Further, there is nothing problematic with treating some career positions as political appointments for narrowly defined purposes, like performance review procedures or details to state or local government.

¹⁸¹ 6 U.S.C. 349(d)(3).

¹⁸² 38 U.S.C. 725(c).

meaning can only be understood by looking at the phrase as a whole.

There is no doubt that Congress meant the policy-influencing terms to encompass political positions. What is at issue is whether Congress used the terms as a singular term of art that definitionally describes only political appointments, or used the terms in their ordinary sense and employed language that can, at the President's discretion, also cover some career positions. Reviewing this history, OPM concludes that phrase "positions of a confidential, policy-determining, policy-making, or policy-advocating character" is not a singular term of art, but the components in this phrase bear their ordinary meaning. That meaning certainly encompasses, but is not limited to, politically appointed positions.

OPM notes that the phrase "confidential, policy-determining, policy-making, or policy-advocating" was not used as a term of art, or even as a singular phrase, before the CSRA's enactment in any source OPM or commenters have identified. This strongly implies Congress did not use this phrase as a term of art. The history that commenters point to instead used 7511(b)(2)'s constituent terms as separate descriptors. For example, the Brownlow Report spoke of "policy-determining posts."¹⁸³ The Senate debate over the First and Second Hoover Commission Reports used the terms "policy-making" and "policy-determining" respectively.¹⁸⁴ E.O. 10440, which created Schedule C, used the phrase "positions of a confidential or policy-determining character."

The CSRA, by contrast, did not use any of these pre-existing terms or phrases. It instead used a broader and more expansive formulation: "confidential, policy-determining, policy-making, or policy-advocating." Even if, *arguendo*, commenters' argument was correct that the expression "confidential or policy-determining," used in E.O. 10440 in

describing Schedule C positions, was an accepted term of art that referred exclusively to political appointees, the natural implication is that Congress intended to add two other categories of employees to the exceptions contained in 5 U.S.C. 7511(b)(2)—those employees who did not fall into the Schedule C classification but were "policy-making" or "policy-advocating."¹⁸⁵ Under the reading advanced by Commenters, these additions would be mere surplusage, serving no practical purpose other than to needlessly confuse a reader familiar with the pre-existing term of art. Congress's deliberate decision to add additional new terms to the prior formulation suggests each term is meant to have independent meaning. The alternative reading would depart from "[f]ollowing the axiom that words used in a statute are to be given their ordinary meaning in the absence of persuasive reasons to the contrary[.]"¹⁸⁶

Additionally, Congress's use of "or" rather than "and" in 7511(b)(2) implies that it intended (b)(2) to describe a *list* of characteristics building on existing determinations made by President Eisenhower (in creating Schedule C) and others rather than a self-contained term of art created from whole cloth. Had Congress intended to classify this term as a term of art, it was well able to do so. Congress did in fact do so many times for other terms of art used elsewhere in the CSRA, including in 5 U.S.C. 7511 itself.¹⁸⁷ The choice *not* to provide a unified definition in the section in which the phrase is used, while doing so for terms of art Congress did use in the very section in question, cuts sharply against Commenter 30426's and others' assertion that this list of duties should be understood to be a term of art.

¹⁸⁵ OPM accepted similar arguments in the April 2024 rule. OPM now rejects this conclusion, for the same reason it rejects commenters' arguments.

¹⁸⁶ See *Burns v. Alcalá*, 420 U.S. 575, 580–81 (1975) (citing *Banks v. Chicago Grain Trimmers*, 390 U.S. 459, 465 (1968); *Minor v. Mechanics Bank of Alexandria*, 26 U.S. 46, 64 (1828)).

¹⁸⁷ Chapter 75 precisely defines the scope on an "employee" subject to its provisions. See 5 U.S.C. 7511(a)(1). The CSRA also defines the terms "career appointee" and "noncareer appointee." See 5 U.S.C. 3132(a)(4) and (7). The CSRA elsewhere expressly defines many specific terms of art. See, e.g., 5 U.S.C. 3391 (including separate definitions for "career appointee" and "noncareer employee"), 3591 (same), 3401(2) (defining "part-time career employment"), 4301(3) (defining "unacceptable performance"), 4311 (defining "senior executive" and "career appointee"), 4507(a) (same), 5381 (same), 4701(a)(4) and (5) (defining "demonstration project" and "research program"), 5351(2) (defining "student-employee"), 7103(a)(10), (11), and (13) (defining, e.g., "supervisor," "management official," and "confidential employee"), 7501 (defining "employee" and "suspension"), and 7541 (same).

Not only did Congress elect not to define the policy-influencing terms as a term of art in section 7511 along with the other terms it defined in that section, it used portions of these terms elsewhere in other contexts. As discussed previously in this final rule, Congress established the SES which defined the duties of SES members to include policy-making and policy-determining functions but left out confidential or policy-advocating functions. This makes sense as career SES do not necessarily perform confidential duties, nor are they necessarily expected to advocate for administration policy. In section 3132(a), which was part of the CSRA, Congress treated the policy-influencing terms as separate descriptors, applying only those terms that described the duties of career senior executives and omitting those which did not.

This understanding is most consistent with OPM's near contemporaneous interpretation of the CSRA when it issued implementing regulations. Specifically, in 1981, OPM updated its regulations governing Schedule C appointments and did not extend them to cover "policy-making" or "policy-advocating positions."¹⁸⁸ However, OPM did clarify what positions "confidential or policy determining" described. In 1981, OPM modified 5 CFR 213.3301 to provide that the Schedule C exception for "[p]ositions of a confidential or policy-determining character" applied to "positions in grades GS–15 and below which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials."¹⁸⁹ OPM contemporaneously treated the words "confidential" and "policy determining" as functional descriptions of the types of duties that make positions eligible for placement in Schedule C. It treated them as having separate meanings—not a singular phrase synonymous with a "political appointee." This usage of these terms as having a functional and separate meaning from one another lasted from 1981 to 2024.¹⁹⁰ Thus, OPM credits this

¹⁸⁸ OPM has not expanded the scope of Schedule C positions in its regulations because Civil Service Rule 6.2 does not place positions of a policy-making or policy-advocating character in Schedule C. E.O. 14317 recently amended Rule 6.2 to place such positions in Schedule G of the excepted service. See E.O. 14317, *Creating Schedule G in the Excepted Service*, 90 FR 34753, 34754 (July 17, 2025).

¹⁸⁹ 46 FR 20146, 20148 (Apr. 3, 1981).

¹⁹⁰ Treatment of the terms as having separate meanings extends to other roughly contemporaneous sources outside the CSRA. See, e.g., *Branti v. Finkel*, 445 U.S. 507, 519–20 (1980)

Continued

¹⁸³ See generally President's Comm. On Admin. Mgmt., Report of the Committee with Studies of Administrative Management in the Federal Government, Gov't Printing Office, Wash., DC (1937).

¹⁸⁴ 124 Cong. Rec. 27540 (Senate) (Aug. 24, 1978) (remarks of Sen. Ted Stevens (R-AK)) ("The Hoover Commission believed that in a true career service, the employee could go as far as his ability and initiative and qualifications indicated, excepting only decisionmaking or confidential posts. It held: '[T]op policy-making officials must and should be appointed by the President. But all employment activities below these levels, including some positions now in the exempt category, should be carried on within the framework of (the civil service system).[']"), <https://www.govinfo.gov/content/pkg/GPO-CRECB-1978-pt20/pdf/GPO-CRECB-1978-pt20-7-1.pdf>.

historical evidence from both Congress and its prior interpretation historically treating the terms “confidential,” “policy-determining,” “policy-making,” and “policy-advocating” as individual words bearing individual constituent meanings used to describe position duties, not as a singular term of art. Accordingly, 7511(b)(2) can only be understood by examining the meaning of its constituent words, individually, and not as a cohesive term, especially as several of these constituent words are used elsewhere in the same statute to define primarily career appointments.

The historical record relied upon by Commenter 30426 shows several parties asserting that “policy-determining” and “policy-forming” positions should not be subject to civil service removal procedures. President Truman issued E.O. 9830 in 1947 in which he moved “Positions excepted from the competitive service . . . [b]ecause of their confidential or policy-determining character” into Schedules A and B, and provided further that the agencies may request that the CSC except additional positions from the competitive service on an ongoing basis, requiring the Commission to furnish an annual report “of the positions which it has excepted from the competitive service under this section during such year.”¹⁹¹ President Eisenhower thereafter issued E.O. 10440 in 1953, in which he authorized the Commission to except positions that “are of a confidential or policy-determining character” from the competitive service, and moved positions of a confidential or policy-determining character into schedule C.¹⁹²

Throughout this history, the terms were not used as a synonym for or “term of art” that was shorthand for “political appointee.” Rather, they were used to describe the types of duties that made a position inappropriate for coverage under civil service protections and eligible to be converted into political appointments. The terms described the types of duties that would appertain to positions that could, or should, be made political appointments. They did not mean political appointments themselves.

This view is supported by contemporaneous evidence, such as President Eisenhower’s press conference and press statement accompanying E.O.

10440, which discusses positions “that do not belong in the Civil Service System.”¹⁹³ In a press release, the White House described those positions as ones where they “shape the policies of the Government” as well as those where there is “a close personal and confidential relationship between the incumbent of the position and the head of the agency.”¹⁹⁴ Further, in answering questions regarding his E.O., President Eisenhower himself asserted the necessity of not putting policy into the hands of people who are not subject to removal by the electorate.¹⁹⁵ Shortly thereafter, Schedule C was created for positions of a confidential or policy-determining character. E.O. 10440 treated the terms “confidential” and “policy-determining” as independent, specific terms the words of which have specific meanings which set forth which positions were eligible for Schedule C, not a “term of art” synonymous with “political appointee.”

As Commenter 30426 notes, over time it became the case that employees appointed to Schedule C positions were often performing policy-making or policy-advocating work as well. Commenter quotes a number of lawmakers and officials describing Schedule C appointees, including CSC Chairman Robert Hampton who said, while testifying in 1972 to the House Committee on Post Office and Civil Service, that “[t]hese generally are positions [Schedule C] which have responsibility for the formulation or advocacy of administration policies, or which involve a confidential relationship with a Presidential appointee.”¹⁹⁶ Chairman Hampton’s characterization, and the characterization by others, are descriptions of the position’s duties.

Subsequently, Congress enacted 5 U.S.C. 7511(b)(2), providing for exceptions from adverse action appeals for excepted positions using the descriptors “confidential, policy-determining, policy-making, or policy-advocating character.” This choice added “policy-making” and “policy-advocating” to the already-existing scope of Schedule C pursuant to E.O. 10440. As already discussed, if Commenter 30246 is correct and

“confidential or policy-determining” was a term of art, Congress deliberately chose to add words to an existing term (describing Schedule C) which serves no purpose other than to confuse readers who knew the existing term. Conversely, if Congress used the terms as separate descriptors the additions of additional functions is easily explained.

Prior Presidential Administration Practices Do Not Limit the Scope of the Final Rule

Commenter 30426 argues that longstanding practice cabins the policy-influencing terms to cover a small number of positions, about 1,600. Commenter 30426 contends, “[t]he long history of this interpretation further evidences that only a few positions can satisfy the criteria of having a ‘confidential or policy determining’ or ‘confidential, policy-determining, policy-making, or policy-advocating’ character.”

This argument conflates successive administration’s policy decisions to limit political appointments—precisely because of the benefits of expert career civil servants that commenters discuss and with which OPM agrees—with a substantive limit on the scope of 5 U.S.C. 7511(b)(2). Congress has been clear when it caps the number of positions exempt from adverse action procedures. The CSRA caps the number of noncareer SES at no more than 10 percent government-wide and 25 percent in any one agency.¹⁹⁷ Other statutes also cap the number of positions that can be given 5 U.S.C. 7511(b)(2) determinations. Title 42 caps the number of policy-influencing positions in the Social Security Administration at no more than 20.¹⁹⁸ Elsewhere in statute, the Department of Veterans Affairs is capped at no more than 15 positions excepted from competitive service because of their “confidential or policy-determining character.”¹⁹⁹

It is a basic canon of statutory construction that if “Congress includes particular language in one section of a statute but omits it in another section of the same [statute], it is generally presumed that Congress acts

¹⁹⁷ See 5 U.S.C. 3134(b) and (d)(1).

¹⁹⁸ See 42 U.S.C. 904(c). OPM notes that 42 U.S.C. 904(c)(2) explicitly presupposes the authority of the President, or OPM, to exclude positions from the competitive service that have been “determined . . . to be of a confidential, policy-making, or policy-advocating character and have been excepted from the competitive service thereby.” This directly refutes the contention that the President cannot except positions from the competitive service for purposes of bringing them within the 5 U.S.C. 7511(b)(2) exception.

¹⁹⁹ 38 U.S.C. 709(b).

¹⁹³ Pres. Dwight D. Eisenhower, President’s News Conference (Mar. 19, 1953), <https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-459>.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Commenter 30426, at 23 (citing *The Federal Executive Service: Hearings on H.R. 3807 Before the Subcomm. on Manpower & Civil Serv. Of the H. Comm. On Post Off. & Civil Serv.*, 92 Cong. 13 (1972).

(in discussing whether county public defenders can be treated as purely political appointees, found that the “confidential” information they possessed, concerning individual defendants represented, was not the sort of confidential information which necessitated that result).

¹⁹¹ E.O. 9830, 12 FR 1259, 1263 (Feb. 25, 1947).

¹⁹² E.O. 10440, 18 CFR 1823, 1823 (Apr. 2, 1953).

intentionally and purposefully in the disparate inclusion or exclusion.”²⁰⁰ Consequently, Congress declining to specify in statute a numerical limitation in 5 U.S.C. 7511(b)(2) when it opted to do so elsewhere is telling. This indicates the number of positions that can be held policy-influencing is left, in other cases, to the discretion of the executive branch. Commenter provides no argument grounded in statutory text that the President is, outside agencies with express statutory restrictions, limited to determining a small number of positions are policy-influencing.

Further, accepting Commenter’s construction would raise serious constitutional concerns, as discussed in more detail below. Briefly, reading 7511(b)(2) to implicitly limit how many positions can be declared policy-influencing means the President cannot generally except policymaking inferior officers in the General Schedule from removal restrictions and subchapter II appeals. In that case the CSRA is unconstitutional as applied to those offices because Congress cannot restrict the President’s ability to dismiss inferior officers with substantive policymaking or administrative responsibilities. Reading 7511(b)(2) to not contain such an unenumerated numerical limit largely sidesteps this constitutional concern.

Prior Interpretative Statements From Other Agencies Are Not Controlling

Commenter 30426 also argues that a 2020 Department of Justice (DOJ) rulemaking described political appointees as policy-influencing positions. Respectfully, Commenter 30426 misinterprets the DOJ rulemaking. DOJ was responding to concerns that giving authority to the Director of the Executive Office of Immigration Review would lead to these decisions being subject to political influence. At the time that rule was issued, no positions had been transferred into the former Schedule F—in DOJ or elsewhere—so all positions that had been excepted under section 7511(b)(2) at the time were political appointees. DOJ’s point was that all employees in the Executive Office of Immigration Review were selected on a non-partisan basis, including the EOIR Director, who is a career SES member. DOJ was not attempting to define how section 7511(b)(2) could be applied, including under E.O. 13957, but how it was then applied in EOIR.

Reliance on MSPB’s Decisions in *Thompson* and *Briggs* Is Inapposite

Commenters 30426 and 35519, among others, argue that the MSPB held that a determination under 5 U.S.C. 7511(b)(2) is not adequate unless it is made before the employee is appointed to the position. As OPM explained in the proposed rule, the MSPB’s statements to this effect in *Thompson v. Department of Justice* and *Briggs v. National Council on Disability* are unreasoned dicta.²⁰¹ *Thompson* itself merely cited *Briggs* for this proposition without further analysis. However, in neither case was the issue of whether an incumbent employee could lose adverse action protections when a policy-influencing declaration was made actually before the Board. In *Briggs* the MSPB never analyzed the text of CSRA to assess whether policy-influencing determinations could be applied to current employees. It simply asserted without any statutory analysis that determination had to be made before appointment. However, this ruling was not necessary to the MSPB’s holding, as *Briggs*’s position was found to have never been declared policy-influencing as a matter of fact.²⁰² In *Thompson*, it was not clear if the decision declaring the position policy-influencing was ever properly made, and if it had been made it must have occurred after the employee was removed.²⁰³ OPM agrees an agency cannot sanction a removal by retroactively declaring the incumbent’s position policy-influencing.²⁰⁴

Subsequent MSPB cases simply cite *Briggs* and *Thompson* for the proposition that 7511(b)(2) determinations must be made prior to a position being filled. None of these cases provided further analysis. OPM rejects the position that MSPB dicta trumps the plain language of the CSRA insofar as the latter forecloses adverse action appeals for positions that are statutorily excluded from coverage. Nothing in chapter 75 requires that 7511(b)(2) determinations be made prior to appointment for the determination to be effective. Given the significant restriction on Presidential authority this would impose, and the severe constitutional concerns it would raise (discussed below), OPM believes at the very least a clear statement from Congress would be necessary to insulate senior policymaking employees from accountability to the President.

In response to the Department of Justice’s conduct at issue in *Thompson*,

Congress in 1994 amended 5 U.S.C. 2302(a)(2)(B) to expressly state that policy-influencing determinations had to be made prior to a personnel action for the exception from PPPs to apply. Commenter 30426 argues that this legislation did not “disturb” *Thompson*’s statement that chapter 75 policy-influencing determinations would need to be made prior to an incumbent filling a position to lose entitlement to adverse action procedures. Commenter concludes that while section 7511(b)(2) determinations would have to be made prior to an employee’s acceptance of a position, section 2302(a)(2)(B) determinations would have to be made prior to the relevant personnel action.

OPM disagrees that this analysis is relevant. The fact that Congress did not amend the CSRA in response to MSPB dicta implies nothing about how chapters 23 and 75 operate.

Commenter 30426 also points to the MSPB’s decision in *Chambers v. Department of the Interior*,²⁰⁵ arguing that a 7511(b)(2) policy-influencing determination must be made before an employee is appointed to a position. As with precedents discussed above, the relevant discussions are dicta and conducted no analysis of the underlying statutory text. *Chambers* is also inapposite, as the policy-influencing determination was never made and the issue was not before the MSPB.²⁰⁶

Commenter 30426 also argues that the exclusion’s applicability was necessarily before the court in *Briggs*, because its applicability would have stripped the Federal Circuit of jurisdiction. According to the Commenter, if paragraph (b)(2) exclusion had applied, the Federal Circuit would have had to reverse and remand the case with instructions that the MSPB dismiss it for lack of jurisdiction. The court would have had no power to adjudicate the case. However, the issue of whether a position can be declared policy-influencing after someone is appointed to it was not before the Federal Circuit. Its opinion thus says nothing about whether it would have jurisdiction if an appropriate authority had declared the position policy-influencing.

Commenter 21374 argued that the proposed rule is not in accord with *Hamlett v. Department of Justice*.²⁰⁷ In *Hamlett*, much like *Briggs*, the MSPB held that a non-preference eligible Assistant U.S. Attorney who had completed a two-year trial period, could

²⁰⁰ *Immigration & Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983) (internal quotation marks omitted)).

²⁰¹ See *Briggs*, 60 M.S.P.R. 331, 335–36 (1994) and *Thompson*, 61 M.S.P.R. 364, 368–69 (1994).

²⁰² *Briggs*, 60 M.S.P.R. at 335–36.

²⁰³ *Thompson*, 61 M.S.P.R. at 368–69.

²⁰⁵ 116 M.S.P.R. 17 (2011).

²⁰⁶ See *id.*

²⁰⁷ 90 M.S.P.R. 674 (2002).

challenge their chapter 75 removal before the Board under the DPAA.²⁰⁸ Notably, the Board found that neither the President nor OPM had made a determination that the incumbent occupied a policy-influencing position under 5 U.S.C. 7511(b)(2).²⁰⁹ However, the MSPB did not foreclose the possibility that such a determination could have been made. OPM believes *Hamlett* recognizes that if such a decision had been made by the President or OPM, that Hamlett would not have been entitled to challenge her removal.

MSPB's Interpretation of Policy-Influencing Terms in O'Brien Are Not Dispositive

Commenter 8019 argues that the MSPB's opinions in *Special Counsel v. Peace Corps* and *O'Brien v. Office of Independent Counsel* that the usage of the term "confidential, policymaking" in the CRSA is no more than shorthand for positions to be filled by "political appointees."²¹⁰ With respect, OPM declines to accept those Board opinions as controlling the interpretation of these terms for section 7511(b)(2) for several reasons.

OPM first notes that Congress vested the President and OPM, not the MSPB, with authority to determine whether excepted service positions were policy-influencing. The MSPB has no authority to countermand Presidential or OPM determinations in this regard. Further, as the *O'Brien* Board explicitly noted, there is nothing in the interpretation of the relevant provisions of the legislative history of the CRSA or the Whistleblower Protection Act, the statute at issue in that proceeding, to compel the MSPB's interpretation.²¹¹ The Board relied largely on the authority of its earlier *Special Counsel v. Peace Corps* opinion.²¹² *Special Counsel* cited no authority whatsoever for its determination that the terms "confidential," "policy-making," and "policy-determining" are mere shorthand for "political appointee," and it made no argument of any kind for that position.²¹³ It seemed to take as dispositive the President's authority to unilaterally appoint and remove occupants of such positions "notwithstanding any provision of

law,"²¹⁴ but it also stated that positions falling under those terms "can be identified by their relationship to the President or the administration officials in furthering the goals of the President."²¹⁵ The first suggestion seems to rely on an untenable bifurcation of employees with and without protection from presidential removal, one that fails to comport with the actual variety of excepted service positions or with a functional appraisal of the importance of the position in advancing the President's priorities. And, considering OPM's position that Schedule Policy/Career positions should be exempted for much the same reason that the Board suggested that political appointees should be in *Special Counsel*—based on the centrality of the role in advancing the President's priorities—it is unclear that the actual reasoning of *Special Counsel* cuts against the present rulemaking. The proposed rule discussed at length its textual analysis of the CRSA which led it to reject the position, advanced by the Commenter, that the policy-influencing terms are mere terms of art; this final rule expands on those arguments above.²¹⁶ Ultimately, OPM respectfully declines to accept MPSB's opinion as controlling.

Employees Do Not Accrue Appeal Rights

Commenter 30426 also argues that *Roth v. Brownell*²¹⁷ and other cases point to the long historical tradition of applying civil service protections based on the employee's accrual of status or rights. The Commenter argues that this tradition was well understood by members of Congress when they enacted the CRSA and that they assumed it would continue. On the contrary, *Roth* was concerned with interpreting provisions of the Lloyd-La Follette Act.²¹⁸ As OPM explained in the proposed rule, Congress abolished that statutory requirement for adverse action procedures upon transfer out of the competitive service when it enacted the CRSA, and Congress did not replace it with any comparable language providing adverse action procedures upon reclassification. It is well settled

that it is the text of the law that governs, not legislators' assumptions.²¹⁹

Commenter 30426 also argues that inherent in the structure of the CSRA is the fundamental notion that employees who accrue civil service protections, particularly with respect to adverse actions, retain those protections unless they either forfeit them voluntarily by accepting a new appointment or lose them due to poor performance or misconduct through the application of the CSRA's procedures. However, Commenter 30426 points to no statutory authority for this proposition, only a handful of isolated court cases, which universally involve statutory analysis of pre-CSRA laws.

Commenter 30426 also points to non-judicial materials, such as a 1980 Comptroller General opinion and 1988 transition guidance. The transition guidance was interpreting 1968 OPM regulations that were still in effect then but are not now. The Comptroller General opinion was based on a 1963 Court of Claims decision interpreting the now-repealed Lloyd-La Follette Act. And the Commenter's citation to *Casman v. Dulles* is similarly unavailing, as that case concerned statutory interpretation of the Veteran's Preference Act.

Involuntary Reassignment Into Schedule Policy/Career Does Not Continue MSPB Jurisdiction

Commenter 30426 argues that the Federal Circuit's decision in *Williams v. Merit Systems Protection Board*²²⁰ requires that the agencies must give employees a choice to be moved into Schedule Policy/Career. The Commenter infers that accepting appointment in a position excepted from chapter 75 is a choice, and on that basis that employees must have an implicit choice about whether their positions are declared policy-determining for that determination to be effective. Otherwise, according to Commenter 30426, the act of reassigning the employee to Schedule Policy/Career is an involuntary movement and, therefore, does not strip the MSPB of jurisdiction.

OPM disagrees with Commenter 30426's assessment of the court's decision in *Williams*. The employee in *Williams* voluntarily applied and was

²⁰⁸ *Id.* at 680.

²⁰⁹ *Id.* at 678.

²¹⁰ 31 M.S.P.R. 225 (1986) and 74 M.S.P.R. 192 (1997), respectively.

²¹¹ 74 M.S.P.R. at 204 (stating that the CRSA had "little discussion of the phrase" and the WPA "does not indicate what Congress intended.").

²¹² *Id.* at 205–06.

²¹³ 31 M.S.P.R. at 231.

²¹⁴ *Id.* at 229.

²¹⁵ *Id.* at 232.

²¹⁶ See 90 FR at 17194–97 (discussing why "positions of a confidential, policy-determining, policy-making, or

policy-advocating character" should not be read as a term of art meaning "political appointee.").

²¹⁷ 215 F.2d 500 (D.C. Cir. 1954), *cert. denied*, 348 U.S. 863 (1954).

²¹⁸ *Id.* at 502.

²¹⁹ See *Diamond*, 447 U.S. at 315 ("[A] statute is not to be confined to the 'particular application[s]' . . . contemplated by the legislators." (quoting *Barr*, 324 U.S. at 90)); *Oncale*, 523 U.S. at 79 ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed."); see also *Bostock*, 590 U.S. at 653 ("[T]he limits of the drafters' imagination supply no reason to ignore the law's demands.").

²²⁰ 892 F.3d 1156 (Fed. Cir. 2018).

selected for a position without MSPB appeal rights within the same agency.²²¹ And despite not being fully apprised of the consequences of accepting the new position, the court ultimately found that appeal rights will not attach to the new position because he did not meet the definition of employee under 7511(a)(1)(B)(ii).²²² The court analogized the facts in *Williams* with prior decisions finding that employees who voluntarily move to positions without appeal rights do not bring those rights with them.²²³ Moreover, the Federal Circuit expressly declined to rule in *Williams* whether an employee retains MSPB appeal rights after an involuntary or coerced intra-agency transfer to a position.²²⁴

While neither the Federal Circuit nor MSPB have since ruled whether an employee retains statutory appeal rights following involuntary movement to a position without them, OPM believes that they do not. Consistent with the Federal Circuit's views on voluntary movement of personnel, 7511(b)(2) clearly excludes policy-influencing positions from coverage under chapter 75 adverse action procedures. Congress did not establish in statute a savings provision for employees impacted by 7511(b)(2) determinations to retain their procedural rights under chapter 75. The text of the law instead applies to all positions that have been determined policy-influencing, without respect to the personal status of the employees encumbering the position.

Schedule Policy/Career Determinations May Be Made While a Position Is Encumbered

Commenter 30246 argues that 7511(b)(2) determinations cannot be made while the position is encumbered due to the text of 7511(b). Commenter 30426 also argues that other exclusions in section 7511(b) describe a condition that exists only in the present. For example, (b)(10) excludes an employee “who holds a position” in a particular agency component and (b)(9) excludes an employee “who is described” in another statute. Only (b)(2) uses the present perfect tense: “whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character.” Commenter 30426 argues that the Supreme Court has characterized the present perfect tense

as “denoting an act that has been completed.” Commenter concludes that because Congress did not use the present tense and drafted 7511(b)(2) as applying to an employee “who holds a position” subject to the requisite determination, that indicates the exception is not meant to be applied to currently encumbered positions.

Respectfully, Commenter 30246 misstates how the Supreme Court characterizes the present perfect tense. *Hewitt v. United States* explained that the present perfect tense can refer to “a past action that comes up to and touches the present”²²⁵ and elaborated that “one might employ the present-perfect tense to describe situations ‘involv[ing] a specific change of state’ that produces a ‘continuing result.’”²²⁶ 7511(b)(2) determinations are exactly this: a past change of state which produces an ongoing result. The determination that a position is policy-determining is a one-time event that occurs in the past and has been completed, but produces a specific change of state with ongoing relevance. In contrast, using the present tense in 7511(b)(2) would make little sense. The President or OPM do not determine a position is policy-influencing as an ongoing event. Further, 7511(b)(10) also uses the same grammar: “who holds a position within the Veterans Health Administration which *has been* excluded from the competitive service. . . .”

Commenter 30426 also argues that reading 7511(b)(2) to only apply to determinations made prior to an employee accepting a position, and to thus have no application to currently encumbered positions, is supported by viewing section 7511(b)(2) in the context of the other exceptions in section 7511(b). Commenter argues that the other exceptions in section 7511(b) apply only when an employee has made a choice, and this indicates the same applies to 7511(b)(2).

OPM disagrees. Nothing in 7511(b) discusses giving employees an affirmative choice. 7511(b) instead categorically excepts entire agencies and classes of positions, like those in the CIA, the FBI, the Foreign Service, and entire categories of individuals like reemployed annuitants and foreign nationals working overseas. Commenter 30426 infers that accepting appointment in a position excepted from chapter 75 is a choice, and on that basis that

employees must have an implicit choice about whether their positions are declared policy-determining for that determination to be effective. This does not follow, and, as discussed below, that construction raises serious constitutional concerns.

Employee Position Descriptions Are Not Dispositive of Policy-Influencing Duties

Commenter 30426 also argues that OPM's January 2025 Memorandum sweeps into consideration for Schedule Policy/Career every position for which a position description mentions policy work. OPM has long-established position classification standards for agencies to implement the Classification Act of 1949. Some standards use terms related to policy work for the purpose of determining a position's grade level. Commenter argues, without supporting evidence, that the use of the word “policy” in position descriptions pursuant to the Classification Act of 1949 has no bearing on the meaning or scope of the term as used throughout the CSRA. Commenter asserts the term “policy” in position descriptions implicates grade-determining functions, not rights-determining ones.

As a preliminary matter, OPM does not expect to recommend every position described as entailing policy work for Schedule Policy/Career, but the fact that a position entails policy work is a natural factor for consideration when formulating recommendations. Commenter presents no evidence that Congress intended the term “policy” in section 7511(b)(2) to be divorced from that term's use in implementing the Classification Act.

Rather, OPM believes Commenter's argument strengthens the point that Congress did not intend the word “policy” to describe only a few hundred political appointments in light of the executive branch's longstanding preexisting practice of describing tens of thousands of career positions as developing or establishing policy. Congress surely understood this when it passed the CSRA.

Schedule Policy/Career Does Not Target Attorneys

Commenter 30426 also argues that this rulemaking targets attorneys throughout the Federal Government, without regard to attorneys' responsibilities or their lack of authority to do more than suggest ideas. Commenter 30426 alleges that this arbitrary targeting of attorneys runs contrary to the function of the DPAA, which the congressional committee responsible for that law indicated was expressly meant to provide attorneys

²²¹ *Id.* at 1163.

²²² *Id.* at 1162.

²²³ *Id.* at 1162–63.

²²⁴ *Id.* at 1163 (“[T]here may be situations in which an agency coerces or deceives an employee into accepting a new position. We need not consider those scenarios here.”).

²²⁵ 606 U.S. 419, 427–28 (2025) (quoting *Chi. Manual of Style* § 5.132, at 145 (17th ed. 2017)).

²²⁶ *Id.* at 428 (quoting R. Huddleston & G. Pullum, *The Cambridge Grammar of the English Language* at 145 (2002)).

with MSPB appeal rights. Commenter 29987 and others similarly argue that employees (including but not limited to attorneys) involved in the policy process through activities such as reviewing, editing, or drafting regulations should not be considered policy-determining or policy-making employees because they lack authority to decide the content of those regulations and are merely advisors or assistants in the policy process. In Commenter 29987's view, "[o]nly those people who have the final say are 'determining' or 'making' policy."

OPM believes this approach reads the terms "policy-making" and "policy-determining" too narrowly. In general, authority to issue regulations is statutorily vested in agency heads, who are excluded from subchapter II's provisions. Reading the term "policy-determining" to mean only those with ultimate decisional control over policy decisions would rule out its application to virtually every employee covered by subchapter II and render the 5 U.S.C. 7511(b)(2) exemption for policy-determining positions a nullity. In statutory context, "policy-determining" covers more officials than principal officers given the final say over policy decisions.

OPM also finds it significant that the CSRA added "policy-making" to the pre-existing term "policy-determining." The canon against surplusage indicates this addition implies "policy-making" and "policy-determining" are distinct categories. OPM believes that it is reasonable to construe employees substantively involved in the policy process, such as through drafting or editing policy documents, or providing policy advice, as "making" policy even if they do not "determine" it. As Commenter 29887 points out, to "make" something ordinarily means to produce or create it. Just as a factory's employees are understood to be "making" manufactured goods, even though they do not determine what the factory will produce, employees substantively involved in the policy process are naturally seen as "making" policy even though they do not unilaterally "determine" policy decisions. OPM believes that viewing policy-determining as describing (delegated) authority to make policy decisions and policy-making as involvement in policy production is a natural reading of the terms.²²⁷

Unlike Commenter 29887's construction, this interpretation treats "policy-making" and "policy-determining" as distinct, rather than redundant terms. Commenter does not explain why OPM should read the Congressional addition of the new term "policy-making" as entirely synonymous with the pre-existing term "policy-determining." In addition to avoiding surplusage, construing employees substantively involved in the policy process as "making" policy also reflects the significant real-world authority that such employees can wield.

The authority to suggest policy ideas or to produce or edit draft policy documents is often a significant policy-making role. This is easily seen in other contexts. White House staff, for example, typically have no formal authority over agency policymaking—merely the authority to suggest ideas, review proposals and flag concerns, or produce initial drafts of executive orders. But it would be naïve to imagine White House staff's role has negligible impact on the policy process because they do not possess formal decisional authority. Positions that involve drafting regulations and guidance or suggesting or otherwise advising on policy decisions are similarly reasonably viewed as having a policy-making character, even if they are not necessarily policy-determining.

Commenter 30426 provides no support for the contention that attorney positions that involve such functions do not have a policy-making character. Attorneys with authority to direct other attorneys in the exercise of their functions, setting responsibilities and priorities and deciding on arguments the Government will advance (or not) are more likely to be policy-determining or policy-making, though OPM recognizes that not all supervising attorneys are appropriate for Schedule Policy/Career. That said, only a minority of attorneys are likely to be reclassified into Schedule Policy/Career. The DPAA will continue to cover a majority of Federal attorneys—just not those with policy-making, policy-determining or policy-advocating responsibilities.

OPM consequently agrees with the notion that the DPAA was intended to provide MSPB appeal rights to attorneys in the Federal Government. The proposed rule is consistent with that expansion and purpose. Previously, adverse action appeals in the excepted service were categorically limited to preference eligible employees in the non-policy influencing positions. The DPAA extended coverage to all excepted

service employees in non-policy influencing positions. OPM expects that most line attorneys will not be held to occupy policy-influencing positions, so that the DPAA's expansion of appeal rights will not be rendered void by this interpretation.

Policy-Influencing Terms Covers Political Appointees and Few Career Employees

Commenter 30426 also argues that the text and purpose of 5 U.S.C. 7511(b)(2) support the interpretation that career positions should continue to be covered under the adverse action procedures codified in chapter 75 of Title 5. Commenter 30426 argues that narrow exceptions, such as those found in sections 7511(b)(2) and 2302(a)(2)(B)(i), must not be read to swallow or alter the rules they modify. Exceptions must be read "fairly," which sometimes means "narrowly in order to preserve the primary operation of the provision" to which they apply.

OPM largely agrees with this analysis and believes a fair reading of the policy-influencing terms is that they cover all political appointees and a relatively small minority of career employees. As described above, this construction aligns with the historical usage of these terms as bearing their individual component meanings, and with Congress' usage of some of these terms in the CSRA itself to describe thousands of career SES members. In the proposed rule, OPM estimated that Schedule Policy/Career would apply to approximately two percent of the Federal workforce. Under this construction, adverse action procedures will continue to apply to the overwhelming majority of the civil service. That is a far cry from the exception swallowing the rule.

Relatedly, many commenters suggest that OPM's estimate of approximately 50,000 positions moving into Schedule Policy/Career is "misleading" and that the guideposts set forth in E.O. 13957, as amended, and OPM's January Memorandum suggest an order of magnitude more positions will be converted. See, e.g., Comment 29887. Having conducted initial review of agency recommendations for Schedule Policy/Career conversions, OPM can state that its initial estimate of 50,000 positions was a reasonable approximation of potential conversions.

Policy-Influencing Is a Short-Hand Descriptor for Statutory Terms

Commenters 0821, 24251, 30426, 35350, and others criticized E.O. 13957, as amended, and the proposed rule for using a vaguely defined term "policy-

²²⁷ OPM has no authority over how the President interprets or applies the policy-influencing terms, and this discussion is not a regulatory definition of the policy-influencing terms.

influencing” to describe the types of positions to be placed in Schedule Policy/Career. They argue that this term impermissibly expands upon the statutory terms “confidential,” “policy-determining,” “policy-making,” and “policy-advocating.”

OPM recognizes that the terms “confidential,” “policy-determining,” “policy-making,” and “policy-advocating” are not synonymous with “policy-influencing” but, as OPM has explained, bear their individual constituent meanings. However, using the term “positions of a confidential, policy-determining, policy-making, or policy-advocating character” constantly throughout this rulemaking would be needlessly cumbersome. OPM suspects the White House invoked “policy-influencing” in its fact sheet and E.O. for the same reason, though the White House did not consult with OPM about doing so. OPM is consequently using “policy-influencing” as a shorthand for the longer phrase, while recognizing the longer statutory phrase and not OPM’s shorthand is legally controlling.

D. OPM’s Authority To Regulate

A number of commenters argued that the Rule exceeds the OPM Director’s authority under 5 U.S.C. 1103. OPM strongly disagrees. This rule falls squarely within the OPM Director’s authority under 5 U.S.C. 1103. Under subsection (a)(5), the Director of OPM is vested with the functions of “executing, administering, and enforcing the civil service rules and regulations of the President and the Office and the laws governing the civil service. . . .” Paragraph (a)(7) of this section further provides that the Director of OPM is responsible for “aiding the President, as the President may request, in preparing such civil service rules as the President prescribes. . . .” Additionally, 5 U.S.C. 1104 provides that the President may delegate his authority for personnel management functions to the OPM Director, and 5 U.S.C. 3301 authorizes the President to “(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service.” 5 U.S.C. 1104(b)(3) further presupposes the OPM Director has responsibility for prescribing civil service regulations.

Even if OPM were to accept the argument put forth—and it does not—that the Director’s authority only extends to advising agencies, but does not include executing, administering, or overseeing the Civil Service Rules or regulations of the President (an argument that is conclusively refuted by the plain statutory text), the Director is

subject to direction from the President in establishing such Civil Service Rules as the President shall from time-to-time promulgate. The President’s authority to manage the civil service is a core function of the office based on Article II of the Constitution.²²⁸ Pursuant to his constitutional authority, the President issued E.O. 14171, directing the Director of OPM to issue regulations implementing this E.O. The President will make all decisions regarding positions to be placed under Schedule Policy/Career.

In addition, under 5 U.S.C. 7511(b), and historically, determining whether positions are “of a confidential, policy-determining, policy-making or policy-advocating character” and thus exempt from adverse action procedures, is a part of the core Article II power of the President to manage the executive branch. Congress has delegated to the President this power. When a statutory delegation invokes the President’s discretion in exercising core Article II responsibilities—such as managing the internal affairs of the executive branch,²²⁹—“his authority is at its maximum.”²³⁰ Our constitutional structure presumes that Federal officers and agencies will be “subject to [the President’s] superintendence,”²³¹ and the President concomitantly “bears responsibility for the actions of the many departments and agencies within the executive branch.”²³² Federal agencies depend for their “legitimacy and accountability to the public [on] a ‘clear and effective chain of command’ down from the President, on whom all the people vote.”²³³

OPM has for many decades administered, on the President’s behalf and pursuant to delegations, the rules and regulations pertaining to the excepted service.²³⁴ These OPM rules are issued pursuant to Presidential E.O.s authorizing appointments under Schedules A, B, C, D and E. For example, OPM’s predecessor agency, the CSC had, as early as passage of the Pendleton Act, promulgated rules

relating to what is known today as Schedule A.²³⁵ In 1953, President Eisenhower issued E.O. 10440²³⁶ providing for Schedule C in the excepted service. Although Schedule C appointments are made by agencies, generally in coordination with the Office of Presidential Personnel, it is OPM that publishes the periodic list of such appointments. Similarly, President Obama issued E.O. 13562 on December 27, 2010, creating Schedule D in the excepted service, “Recruiting and Hiring Students and Recent Graduates.”²³⁷ Subsequently, OPM issued proposed²³⁸ and final rules²³⁹ implementing this E.O.

More recently, to address issues concerning the constitutionality of the appointment of administrative law judges performing various administrative adjudication functions within executive agencies, President Trump issued E.O. 13843 on July 10, 2018, “Excepting Administrative Law Judges from the Competitive Service.”²⁴⁰ This E.O. established Schedule E within the excepted service. OPM issued a final rule establishing, *inter alia*, criteria for pay setting for administrative law judges under Schedule E and had previously issued a proposed rule addressing issues governing the service of administrative law judges at executive agencies.²⁴¹ The numerous instances in which OPM has issued rules governing appointments to positions placed in the excepted service by the President under an E.O. makes clear that OPM’s role in the administration of excepted hiring authorities is backed by longstanding precedent. Accordingly, this rulemaking is fully in accord with the authorities found at 5 U.S.C. 1103(a)(5) and (7).

In establishing Schedule Policy/Career, the President has directed OPM to follow certain procedural requirements to broadly develop rules governing the administration of positions placed under Schedule Policy/Career. Recommendations for which positions should be placed under Schedule Policy/Career will initially be made by agency heads. These recommendations will be sent to and reviewed by OPM, and the final decision made by the President.

Although OPM believes its Director has broad authority to undertake this rulemaking, the Director in prescribing

²²⁸ *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 483 (2010); *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

²²⁹ See *Nixon v. Fitzgerald*, 457 U.S. 731, 756–57 (1982).

²³⁰ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (*Youngstown Sheet*) (Concurring Opinion of Justice Jackson).

²³¹ The Federalist No. 72, at 487 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

²³² *Trump v. United States*, 603 U.S. 593, 607 (2024).

²³³ *United States v. Arthrex, Inc.*, 594 U.S. 1, 11 (2021) (citation omitted); cf. Elena Kagan, *Presidential Administration*, 114 Harvard L. Rev. 2245, 2331–2339 (2001).

²³⁴ See 5 CFR parts 213 and 302.

²³⁵ Van Riper at 207.

²³⁶ E.O. 10440, 18 FR 1823.

²³⁷ E.O. 13562, 75 FR 82585, 82585–87 (Dec. 30, 2010).

²³⁸ 76 FR 47495 (Aug. 5, 2011).

²³⁹ 77 FR 28194 (May 11, 2012).

²⁴⁰ 83 FR 32755 (July 13, 2018).

²⁴¹ See 85 FR 59207 (Sep. 21, 2020).

rules for the administration of Schedule Policy/Career is also simultaneously following Presidential direction and authorization. Accordingly, this rulemaking is fully in accord with the authorities found at 5 U.S.C. 1103(a)(5) and (7) and 1104(a)(1).

OPM also notes that commenters' argument proves too much. Assuming, arguendo, that OPM lacks regulatory authority to modify civil service rules and regulations of the President, then it follows that OPM lacked authority to issue the changes made by the 2024 final rule. In that case OPM would be obligated to withdraw its prior unlawful regulations. So even accepting that argument reinforces the case for rescinding the changes made by the 2024 final rule.

IV. Regulatory Amendments and Related Comments

OPM is amending its regulations in 5 CFR chapter I, subchapter B, as discussed below to strengthen employee accountability and improve the management of the Federal workforce. In the following sections, we summarize and respond to the public comments that are most appropriately addressed by reference to the specific portion of the regulations to which the comments applied.

A. Incorporating Schedule Policy/Career Into the Civil Service Regulations

In this final rule, OPM amends its 5 CFR part 213 regulations (the Excepted Service) to incorporate Schedule Policy/Career into OPM's civil service regulations.

Part 213—Excepted Service, Subpart A

Section 213.101 Definitions

Section 213.101 defines terms relating to the excepted service. This rule amends these definitions to add two new definitions of "career position" and "noncareer position" for purposes of part 213. These definitions clarify the distinction between noncareer Schedule C positions and career Schedule Policy/Career positions. Commenter 33529 raised concerns that OPM's proposed definition of a noncareer position as one who will normally resign upon a Presidential transition does not take into account that expectations of resignation may change with each new Presidential administration. Commenter 33328 also recommends revising 5 CFR 213.101(b)(1) to clarify that a career position means any position other than a non-career position, including positions of a temporary or time-limited nature.

OPM appreciates this perspective. However, in the proposed rule OPM

clarified that the definition of noncareer position is taken from Section 2 of E.O. 13957, as amended, with additional clarity that such positions are subject to preclearance by the White House Office of Presidential Personnel. Any employee holding a noncareer position at the time of a Presidential transition will be subject to a decision by the White House Office of Presidential Personnel to retain the noncareer employee.

Section 213.102 Identification of Positions in Schedule A, B, C, D, or Policy/Career

This rule amends § 213.102 to state that the President may place positions in Schedule Policy/Career. While Civil Service Rule 6.2 now authorizes OPM to place positions in Schedule Policy/Career, E.O. 13957, as amended, directs OPM to make recommendations to the President about what positions should go into that schedule rather than approve agency petitions itself. President Trump has reserved to himself the final decision about which positions will go in Schedule Policy/Career.

Commenter 27012 points out that the proposed rule does not list comprehensive characteristics for positions included in Schedule Policy/Career. Other commenters, such as Commenter 7547, 13168, 16850, 30426, and 35031 also expressed concern that there is little guidance to agencies on who will be included in Schedule Policy/Career and that the guidance provided is very broad. Similar to the implementation of other new rules and executive orders, OPM notes that it published the January 2025 Memorandum to provide agencies with guideposts to help agencies identify positions that are more likely to be policy-influencing.²⁴² Further, OPM notes that within the universe of positions that are eligible for transfer to Schedule Policy/Career because of their policy duties or confidential character, exactly which positions will move to Schedule Policy/Career is a discretionary Presidential policy decision that OPM has no authority over. OPM is not in a position to issue regulations or guidance restricting Presidential discretion in this matter. OPM accordingly is not in a position to list comprehensive characteristics of

positions that will be moved to Schedule Policy/Career.

Separately, Commenter 30426 criticizes the guidance in the January 2025 Memorandum. The Commenter argues that memorandum incorrectly focuses on the significance of a position's authority rather than on the position's character. The Commenter also points to the memorandum's discussion of the "authority to bind the agency" to a "course of action" or holding "delegated or subdelegated authority to make decisions committed by law to the discretion of the agency head. OPM's position is that the authority to legally bind the Government will often be indicative of a policy-making or policy-determining role which justifies placing the position into Schedule Policy/Career. Again, this is one factor to be considered as OPM and the White House exercise discretionary judgment.

That said, the specific positions to which Commenter 30426 objects also have an obvious connection to the section 7511(b)(2) exceptions. For example, Commenter 30426 objects to positions involved in presenting program resource requirements to OMB examiners. These positions advocate for agency policy and secretarial priorities, expressed through funding requests, within the executive branch. They have a straightforward connection to policy-advocacy. Nothing in the policy-advocating exception requires that advocacy be directed toward the general public. Advocacy before other branches of government, or within the executive branch, also can qualify. Similarly, if an employee is policy-making, policy-advocating, or policy-determining, then those above them in the chain of command with authority to tell that employee what to do will likely be policy-determining, policy-making, or policy-advocating as well. Where an employee qualifies for the confidential exception based on their confidential relationship to a senior official, that official is also likely policy-making or policy-determining.

Commenters 18409 and 18642 argue that those engaged in grantmaking, particularly scientific grantmaking, are inappropriate for Schedule Policy/Career inclusion because the grantmaking decision is not a policymaking decision. Consequently, Commenter 18409 argues that it makes no sense to reclassify all the reviewers, program officers, advisory councils, and leadership at science funding agencies as political in nature. OPM notes that eligibility for Schedule Policy/Career is distinct from whether a position will actually be moved into that Schedule.

²⁴² U.S. Off. Of Pers. Mgmt., "Restoring Accountability To Policy-Influencing Positions Within the Federal Workforce" (Jan. 27, 2025), <https://www.opm.gov/chcoc/latest-memos/guidance-on-implementing-president-trump-s-executive-order-titled-restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce.pdf>.

Beyond that, OPM disagrees that such positions are not eligible. The scientific nature of a particular job is not determinative of whether or not the position is policy-influencing. As this Commenter, and others, point out, some positions in scientific grantmaking influence public policy. Those positions, as well as any others that are policy-influencing, are appropriate candidates for Schedule Policy/Career. OPM agrees that many positions involved in grantmaking do not determine or make agency policy. OPM will not recommend such positions for reclassification into Schedule Policy/Career.

Commenter 30426 argues that the proposed paragraph (d) at 5 CFR 213.102 is unusual because it states that the President may directly place positions in Schedule Policy/Career when the President already has that statutory authority. OPM appreciates the Commenter's concerns. The Constitution gives the President the power to set workforce policy and 5 U.S.C. 3302(1) vests the President with the power to exempt positions from the competitive service. OPM, of course, recognizes it is not vesting the President with any authority he does not already possess. OPM is modifying its regulations to reflect how Schedule Policy/Career will be implemented. OPM believes that maintaining regulations that clarify to relevant stakeholders and the public how Schedule Policy/Career will operate is beneficial in its own right.

Commenter 31616 maintains that centralizing the power to move positions into Schedule Policy/Career with the President raises concerns over politicization. Commenter's concerns are with the Pendleton Act, not this rulemaking. Under the relevant provision of the Pendleton Act, now codified at 5 U.S.C. 3302(1), the President determines what exceptions from the competitive service are necessary. OPM's authority to place positions in the excepted service is only a delegation of this Presidential authority. OPM has no authority to modify this statutory hierarchy of authority. Commenter also overlooks the role that OPM will still play in the process of designating positions. For instance, OPM issued the January 2025 Memorandum, and will issue additional guidance as needed to assist agencies in identifying Schedule Policy/Career positions and implement these regulations. However, the ultimate decision concerning moving employees to Schedule Policy/Career lies with the President. Finally, as discussed below, OPM believes that concerns over

politicization are misplaced because the President has made it clear that the jobs of Schedule Policy/Career employees who perform their duties effectively and with integrity and efficiency are safe, irrespective of their personal politics.

Commenter 8019 states that there has only been one case—*National Treasury Employees Union v. Horner (Horner)*²⁴³—interpreting relevant statutory language, contained at 5 U.S.C. 3302(1), which allows the President to make exceptions from the competitive service which are necessary and consistent with good administration. Commenter correctly notes that the court in that case ruled OPM's rulemaking arbitrary and capricious under the APA. However, the case has limited if any precedential value.

In *Horner*, OPM attempted to reclassify a large number of competitive service positions into Schedule B on the grounds that, in the aftermath of the *Luevano* consent decree,²⁴⁴ it had no competitive examinations available that would be sufficient to choose appropriate candidates for hire.²⁴⁵ Because OPM claimed it was unable to promptly develop new competitive examinations, it attempted to exempt the positions from examination requirements altogether. As the commenter notes, the court found OPM's decision to be arbitrary and capricious. However, the court did so because OPM requested that the court “defer to its ‘expert judgment regarding the costs of developing new examinations’” with there being “no indication in the record, however, that OPM ever made an expert judgment about what those costs would be.”²⁴⁶ In other words, while the court recognized that, under APA review, it must accord great deference to OPM's reasoned decision-making, it saw no evidence that OPM had come to a reasoned decision at all. Particularly, OPM had not “considered cost to even the minimally meaningful degree required to command judicial deference to its administrative judgment.”²⁴⁷ Thus in *Horner*, the circuit court could not even reach OPM's arguments concerning reclassification into the excepted service on the merits because nothing in the rulemaking materials gave it the ability to do so. Such a situation is clearly inapposite here to the extent that, in both the proposed and this final rule, OPM has explained at length its

decision to implement Schedule Policy/Career. Further, as other commenters note, numerous provisions in Title 5 and throughout presuppose that conditions of good administration warrant excepting positions from the competitive service because of their policy-influencing duties.²⁴⁸

Section 213.103 Publication of Excepted Appointing Authorities

OPM amends § 213.103 to include references to Schedule Policy/Career where applicable throughout.

Section 213.104 Special Provisions for Temporary, Time-Limited, or Intermittent or Seasonal Appointments

OPM amends § 213.104 to include references to Schedule Policy/Career where applicable throughout, as well as references to existing excepted service Schedules A, B, C, and D throughout. As with § 213.102, this rule does not add references to Schedule E administrative law judges, retaining that for a future rulemaking.

Part 213—Excepted Service, Subpart C

Section 213.3301 Positions of a Confidential or Policy-Determining Character

Section 213.3301 sets forth the criteria for Schedule C appointments. This rule amends the heading to align with the text of Civil Service Rule 6.2, as amended by E.O. 13957. Accordingly, Schedule C positions are those of a confidential or policy-determining character normally subject to change as a result of a presidential transition, rather than just positions of a confidential or policy-determining character.

Commenter 33328 recommended amending this heading by using the definition of Schedule C positions at § 213.101. OPM considered making this change but ultimately decided against adopting this recommendation both to streamline the text of the regulation and because it finds the proposed change is not necessary.

This rule also modifies the body of § 213.3301 to expressly define Schedule C positions as noncareer positions. Under these amendments, agencies can “make appointments under this section to *noncareer* positions that are of a confidential or policy-determining character” (emphasis supplied). The definition of noncareer follows that which OPM is adding to § 213.101.

²⁴³ 854 F.2d 490 (D.C. Cir. 1988).

²⁴⁴ *Luevano v. Campbell*, 93 FRD. 68 (D.D.C. 1981).

²⁴⁵ *Horner*, 854 F.2d at 492–93.

²⁴⁶ *Id.* at 499.

²⁴⁷ *Id.* at 501.

²⁴⁸ See, e.g., 5 U.S.C. 2302(a)(2)(B)(i) (a “covered position . . . does not include any position . . . excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character”).

OPM is also eliminating the reference in this section to the § 210.102 definition of “confidential or policy-determining.” E.O. 14171 rendered this definition inoperative and, as discussed below, OPM is removing it from the civil service regulations.

Section 213.3601 Career Positions of a Confidential, Policy-Determining, Policy-Making, or Policy-Advocating Character

The proposed rule added a new § 213.3501 to subpart C for appointments to Schedule Policy/Career of the excepted service. Schedule Policy/Career covers “career positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not in the Senior Executive Service.” OPM notes that it is making an administrative change to renumber the proposed § 213.3501 to § 213.3601 to accommodate a future rulemaking.

Commenters 13602 and 30426 argue that OPM’s proposal to convey competitive status after one year of service in Schedule Policy/Career under paragraph (c) of 5 CFR 213.3501 would be unlawful and enhance the capacity of political appointees to burrow into Government at the end of the Trump administration. Several other commenters submitted similar concerns about the entire rule enabling burrowing-in.

In accordance with Section 4 (b) of E.O. 13957, OPM is exercising its long-standing discretionary authority under 5 CFR 6.3(a) to provide competitive status to excepted service employees who were appointed in the same manner as competitive service employees. Therefore, only individuals appointed to Schedule Policy/Career positions through the merit hiring procedures that would have otherwise been used had the position not been moved into Policy/Career may acquire competitive status. Individuals appointed to positions that, but for their placement in Schedule Policy/Career, would be hired using excepted service hiring procedures, such as Schedule A for attorneys, may not acquire competitive status. OPM also notes that it modified the final rule at § 212.401 to make clear that an employee who has competitive status at the time his or her position is first listed in an excepted service schedule, such as Schedule Policy/Career, or who is moved to a position in the excepted service, will retain competitive status.

However, OPM appreciates the concerns raised by commenters and, therefore, is increasing the time-period necessary to acquire competitive status

from 1 year to 2 years of continuous employment which is consistent with other service requirements (e.g., length of trial periods for nonpreference eligible employees) associated with employment in the excepted service. OPM is also modifying § 213.3601 to detail the requirements for agencies in making appointments to positions in Schedule Policy/Career. As explained in greater detail below, these changes impose merit-based hiring requirements currently used by agencies in making appointments when filling these positions. Together with the expansion of the time required to gain competitive status, these changes adequately address concerns of burrowing-in as raised by the Commenters. OPM will also monitor movement of noncareer personnel into Schedule Policy/Career positions to ensure appointments of current or recent political appointees comply with merit system principles and applicable civil service laws.

Commenter 30426 also argues that OPM is stripping statutory veterans’ preference entitlements including the rights of employees to seek corrective action at the MSPB when a veteran is not hired for a position in Schedule Policy/Career. Respectfully, OPM rejects this hyperbole. Section 4 of E.O. 13957, as amended, requires agencies to follow the principle of veterans’ preference as far as administratively feasible. Accordingly, OPM is modifying § 213.3601(d) to require that agencies must apply the principles of veterans’ preference as far as administratively feasible based on the rating, ranking, and selection processes used for making appointments to Schedule Policy/Career positions. Section 213.3601(d) also specifies that, where numerical ratings are used in the evaluation and referral of candidates, agencies shall follow the regulations related to veterans’ preference in competitive examining found in part 302 and subpart A of part 337 of this chapter, where applicable. When category ratings are used, agencies will follow subpart C of part 337 of this chapter. And where another process is used, veterans’ preference must be considered a positive factor.

These changes to § 213.3601(d) are consistent with the understanding of the term “administratively feasible” found in *Patterson v. Department of Interior*,²⁴⁹ which suggests that it is “administratively feasible” to apply veterans’ preference as a “set increase[] in the rating of preference eligibles who receive a passing score on an agency’s examination” where numerical ratings are used in the evaluation or referral of

candidates.²⁵⁰ For attorney positions, or other positions for which competitive examining is not permitted or is otherwise not appropriate, agencies may treat veteran status as a “positive factor” in the evaluation of candidates.²⁵¹

Once the President determines to place positions in Schedule Policy/Career, therefore, the positions will continue to be subject to the application of veterans’ preference whether they are moved from the competitive service or another schedule in the excepted service. Additionally, applicants for positions in Schedule Policy/Career will still be able to seek corrective action, first, through the Department of Labor and, later, at the MSPB, based on allegations that an agency failed to apply veterans’ preference, as others have done for excepted service positions.²⁵²

OPM is also modifying 5 CFR 213.3601 to identify the minimum merit-based competitive hiring procedures agencies must follow in appointing employees to Schedule Policy/Career positions. At a minimum, agencies will be required to publicly announce job opportunities; evaluate applicants based on valid, job-related assessments; and make selections of highly qualified individuals based on merit. OPM also clarifies the application of veterans’ preference when hiring for positions in Schedule Policy/Career in § 213.3601. Consistent with E.O. 13957’s amendments to Civil Service Rule 6.2 (5 CFR 6.2), agencies are required to follow the principle of veterans’ preference when making appointments to Schedule Policy/Career positions.

Commenter 33204 recommends modifying 5 CFR 213.3601 to provide opportunities for former and current employees appointed to Schedule Policy/Career to obtain positions outside the new excepted service schedule. The Commenter suggests establishing a non-competitive reappointment authority for former Schedule Policy/Career employees initially hired under excepted status, providing the same grade advancement opportunities available to former competitive service employees under existing Enhanced Reinstatement Authority. The Commenter also suggests establishing clear pathways for exceptional Schedule Policy/Career employees to be converted to competitive service positions without competitive examination, based on

²⁵⁰ *Id.* at 1159.

²⁵¹ *Id.* at 1159–1160.

²⁵² See *Jarrard v. Social Security Administration*, 115 M.S.P.R. 397, 399–400 (2010), *aff’d sub nom. Jarrard v. Dep’t of Justice*, 669 F.3d 1320 (Fed. Cir. 2012).

²⁴⁹ 424 F.3d 1151 (Fed. Cir. 2005)

performance and agency need. OPM appreciates the proposal and will consider modifying these regulations as proposed at a future date, if necessary. However, OPM notes that, by providing competitive status to certain individuals appointed under Schedule Policy/Career, those employees may be appointed to competitive service positions and be reinstated back into the civil service, noncompetitively (without a competitive examining announcement).

Commenter 0210 also characterizes Schedule Policy/Career as a solution in search of a problem as they do not see rampant poor performance or misconduct at their agency. If this is in fact that case, this agency should keep most policy-influencing employees after the implementation of Schedule Policy/Career. However, this one employee's observations do not mean that all Federal agencies are free of the problems of weak employee accountability as documented in the proposed rule.

Moreover, Commenter 30055 asserts that various groups, including civil servants, researchers, and scholars, argue that the implementation of Schedule Policy/Career will politicize the civil service such that employees will be hesitant to advise political leaders on policy options based on evidence. Commenter 0210, and others, agree with this sentiment. See Comments 66, 85, 209, 338, 1122, 27012, 30464, and 31616. As explained in the proposed rule, maintaining Federal staff who have a diversity of views and opinions will help identify issues that may have been overlooked during the policymaking process. Even the strongest advocates of E.O. 13957 and opponents of career staff resistance have reported that policymakers under the last Trump administration found career staff criticism to be highly valuable.²⁵³ Therefore, there would be no incentive to dismiss career employees who provide reasoned, candid advice. Consistent with the President's express directives in E.O. 13957, OPM expects that employees who provide frank and candid advice, then faithfully implement agency leadership's ultimate decision irrespective of their personal preferences, have nothing to fear from Schedule Policy/Career. Finally, as OPM stated in the proposed rule, since Schedule Policy/Career is an entirely new schedule, OPM will be closely monitoring its implementation and will recommend additional measures to prevent any abuse by agency personnel

who attempt to circumvent the purpose behind Schedule Policy/Career's creation.

Several commenters, including 30426 and 27012 also argue that evidence of the administration's contempt for career Federal employees and sustained effort to politicize the Federal workforce is abundant. President Trump called career Federal employees "crooked," "dishonest" and "corrupt", etc. Commenter 30426 also argues that employees will feel pressured to wear MAGA hats and pro-Trump slogans in the Federal workplace, including in offices that deal directly with the public. This purported pressure would mean that political appointees and supervisors in agencies will know which Schedule Policy/Career employees fervently support the President politically and which do not. Commenter argues the results of that revelation are predictable—the spoils system will return to a large segment of the Federal workforce.

This criticism is baseless. Commenters overlook the many times the President has praised and lauded Federal employees as a whole, including in public proclamations.²⁵⁴ The President has also praised specific categories of Federal employees, such as when he told Immigration and Customs Enforcement employees "we love you, we support you, and we will always have your back."²⁵⁵ Commenters inaccurately conflate the President's criticisms of some Federal employees who have engaged in problematic behavior with a disdain for Federal employees writ large. And as discussed extensively below, the President and OPM flatly reject the notion that this final rule constitutes a return to the patronage system. Further, as discussed throughout this rule, and in more detail below, the President has directed that Schedule Policy/Career include numerous safeguards to prevent politicization. These include retaining merit-based competitive hiring procedures for positions transferred from the competitive service, and a prohibition on dismissing employees based on their personal political affiliation or views. OPM will help the President ensure these safeguards are effectively implemented.

²⁵⁴ See, e.g., Presidential Proclamation No. 9744, Public Service Recognition Week, 2018, 83 FR 22169 (May 11, 2018).

²⁵⁵ Brian Naylor, *Trump Calls ICE Opponents 'Big Loudmouths,' Praises Agents As 'Great Patriots'*, Nat'l Pub. Radio, Aug. 20, 2018, <https://www.npr.org/2018/08/20/640307567/trump-calls-ice-opponents-big-loudmouths-praises-agents-as-great-patriots> (internal quotations omitted).

Commenter 30426 also argues that Trump purported to fire a Democratic appointee on the MSPB without cause, which if successful after the conclusion of pending litigation would strip the MSPB's board of the quorum needed to adjudicate cases because only one member, a Republican appointee, would remain on that board. Commenter argues that President Trump left the MSPB without a quorum for his entire first term. Therefore, Commenter concludes this action is a blatant attempt to gut the CSRA's statutory remedial mechanism for correcting unwarranted adverse actions, including those that constitute PPPs.

This criticism is also baseless. The Supreme Court has ruled that the President is likely to succeed in defending the legal merits of this action. See *Trump v. Wilcox*, 145 S.Ct. 1415 (2025). The President also promptly nominated a new MSPB nominee. That nominee was recently confirmed by the Senate and appointed to the Board, restoring a quorum. Commenter's concerns about a lack of quorum in the President's first term is more appropriately addressed to the Senate, as the President also repeatedly nominated MSPB members in his first term but the Senate did not vote on their nominations.

Commenter 33328 pointed out that the proposed rule conflicts with E.O. 14284, "Strengthening Probationary Periods in the Federal Service," April 24, 2025, because it exempts Schedule Policy/Career employees from serving a trial period. Under Section 3 of E.O. 14284, the President established a new Civil Service Rule XI to require all employees in the excepted service to serve a trial period. 5 CFR 11.3 establishes the requirement for excepted service employees to serve a trial period as well as certain rules for administering trial periods including crediting prior service. OPM agrees with the Commenter that establishing an exception to serving a trial period for employees in Schedule Policy/Career positions would conflict with E.O. 14284 and 5 CFR 11.3. Therefore, OPM establishes in the final rule that employees in Schedule Policy/Career positions must serve a trial period unless otherwise excepted under the Civil Service Rules or other legal authority. OPM notes that the President or Congress may nonetheless except such employees through a future executive order or change in law, respectively.

Commenters 0610, 0630, 1154, 1477, 1681, 16152, 23876, 26587, 30426, and others, also argue that in these and other ways, the administration has actively

²⁵³ See *Tales from the Swamp* at 5.

demonstrated that it will, indeed, politicize the Federal workforce once it has removed the guardrails protecting the American people against a return of the spoils system. Commenters 30055 and 30408 provide a collection of research on the topic of public policy, specifically the politicization of the U.S. Government and its effect on performance. Commenter 30055 posits that civil service protections lead to a reduction in turnover, a greater investment in skills, lower costs, greater democratic capacity and responsiveness to more than the President, greater communication of program flaws, and an increase in public trust. The creation of Schedule Policy/Career, on the other hand, increases political control on the civil service beyond what was contemplated by Congress in the CSRA and concentrates that control with the President, who has already demonstrated that he will fire employees without regard to their performance. As discussed in Section V(A) below, OPM strongly disagrees with the notion that the final rule returns the Federal civil service to the spoils system or will lead to mass firings without regard for employee performance.

Several commenters mentioned the effects of Schedule Policy/Career on the National Science Foundation (NSF), the National Institutes of Health (NIH), and the scientific community. They argue that positions at these and other agencies will be particularly affected by converting career employees to Schedule Policy/Career. Commenters argue that politics will erode the public trust in science; Schedule Policy/Career positions will be filled by individuals who do not have the required level of expertise; and that career employees outside of Schedule Policy/Career are needed over many years to accomplish the mission.

OPM believes that these commenters overstate the impact on agencies' scientific missions and the scientific community as a whole. These concerns are buttressed more by fear than actual evidence to support their conclusions. Rather, the creation of Schedule Policy/Career is intended to ensure nonpartisan, senior career officials follow executive direction from the President. Freeing these positions from the adverse action appeals process will ensure that only the best candidates will fill these jobs. As these commenters noted, Federal work in the sciences could be undermined by the politicization of this type of work which Schedule Policy/Career is deliberately designed to prevent from occurring. Schedule Policy/Career is not a political

appointment—that is reserved for noncareer positions. While policy-influencing positions can encompass political appointments under Schedule C, they are not exclusively limited to political appointments. As noted in the proposed rule, policymaking, or policy-influencing, is not tantamount to being a political appointee. Adding Schedule Policy/Career will not erode the scientific principles that are implicit in the jobs that this Commenter, and others, describe by changing them to political appointments. Further, OPM notes that Schedule Policy/Career does not alter agency hiring procedures. Positions that are currently filled through competitive hiring will continue to be so filled after being moved to Schedule Policy/Career. By presidential directive, the White House office tasked with selecting political appointees is forbidden from playing any role in the selection of Schedule Policy/Career employees. E.O.s 13957 and 14171 expressly reject treating Schedule Policy/Career positions as political appointments. OPM expects and understands that agencies will follow this Presidential command.

B. Meaning of the Phrase “Positions of Confidential, Policy-Determining, Policy-Making, or Policy-Advocating Character”

This rule amends 5 CFR part 210 (Basic Concepts and Definitions (General)), to remove the definitions for the terms “confidential, policy-determining, policy-making, or policy-advocating” and “confidential or policy-determining” from 5 CFR 210.102(b)(3) and (b)(4) added by the April 2024 final rule. These definitions equate these phrases with political appointees.

Several commenters (0630, 19994, 30408, 30426, and 31616, for example) expressed concern about the removal of these definitions and the lack of a definition of “policy-influencing.” In particular, Commenter 30408 states that the lack of a definition will lead to an inconsistent application of Schedule Policy/Career.

As explained in the proposed rule, E.O. 14171 requires OPM to rescind these restrictive definitions of confidential, policy-determining, policy-making, or policy-advocating established at 5 CFR 210.102(b)(3) and (b)(4); definitions determined to be inconsistent with statutory text that also raised grave constitutional concerns. Moreover, removing these definitions will clarify that both political and career positions can be policy-influencing, and that the President's decision to strengthen accountability in policy-influencing positions by removing

adverse action procedures does not simultaneously impose a personal loyalty test. Removing these definitions also has no practical legal effect because the President has already rendered them inoperative and without effect. The primary effect of these regulatory changes is to update OPM regulations to accord with the operative legal standards.

The ultimate decision about which positions will be moved to Schedule Policy/Career is a discretionary presidential policy determination. OPM has no control over how the President exercises this discretion. Using delegated presidential authority to issue regulatory definitions cabinning presidential discretion in defiance of a presidential directive to do the opposite would be inappropriate. Finally, OPM issued the January 2025 Memorandum addressing positions agencies should consider recommending for Schedule Policy/Career.

C. Adverse Action Procedures and Appeals

OPM rescinds the changes made in its April 2024 rulemaking that allowed employees whose positions were moved or who were involuntarily transferred into a policy-influencing excepted service position to nonetheless remain covered by chapter 75 adverse action procedures and MSPB appeals. In addition, OPM now clarifies that chapter 75 does not apply to employees in Schedule C and Schedule Policy/Career positions. OPM also amends its part 432 regulations to exclude Schedule Policy/Career positions from chapter 43 performance-based removal procedures.

Accordingly, this rule makes the following changes to 5 CFR parts 432 and 752:

Part 432—Performance Based Reductions in Grade and Removal Actions

The April 2024 final rule amended 5 CFR 432.102(f)(10) to: (1) formally exclude excepted service employees whose positions have been determined to be policy-influencing as defined by § 210.102; (2) state that if OPM put such positions in the excepted service they are Schedule C appointments; and (3) eliminate the exception if the incumbent was involuntarily moved to an excepted service position after accruing tenure. This final rule amends § 432.102(f)(10) to remove the reference to the § 210.102 definition, remove the language indicating policy-influencing positions excepted by OPM are necessarily Schedule C positions, and remove the proviso regarding

incumbents moved. Retaining regulatory references to a non-existent definition is not practical.

OPM determined that it would be misleading to state that Schedule C positions are the only policy-influencing positions in the excepted service, since policy-influencing positions in schedules other than Schedule C may also exist. OPM has determined that removing the exception for involuntary transfers will bring the regulation into conformity with the amendments to part 752 and ensure that Schedule Policy/Career employees are treated consistently in chapters 43 and 75. These amendments will clarify that agencies are not required to employ chapter 43 procedures prior to removing Schedule Policy/Career employees for their poor performance.

Several commenters (3269, 20523, 22709, and 23031, for example) allege that the removal of appeal procedures for employees placed into Schedule Policy/Career would violate those employees' due process rights. However, OPM's regulations have long allowed OPM to place employees in excepted categories. A Presidential section 7511(b)(2) determination covering thousands of positions is a policy of general applicability that does not implicate individualized due process.²⁵⁶ The amendments do not violate any employee's due process claim of a property interest in continued employment.

Some commenters, including Commenters 13168 and 30426, argue that the rescission of § 752.201(c)(7) is contrary to law because it "misapplies" the Policy/Career exclusion, violates due process rights, and potentially subjects Federal employees to political discrimination. Commenter 34546 also claims that rescinding § 752.201(c)(7) will dissuade qualified applicants from applying for Federal jobs and wrongly affect Federal employees who have relied on the protections in subpart B of part 752. However, for the same reasons stated below, these arguments are baseless.

Part 752—Adverse Actions, Subpart B

OPM retains the changes the April 2024 final rule made to 5 CFR 752.201—namely to modify language in 5 CFR 752.201(b)(1) to conform with the statutory language in 5 U.S.C. 7501. This change to 5 CFR 752.201(b)(1) conforms the regulatory language to the

decisions of the Federal Circuit in *Van Wersch v. Department of Health & Human Services*, 197 F.3d 1144 (Fed. Cir. 1999), and *McCormick v. Department of the Air Force*, 307 F.3d 1339 (Fed. Cir. 2002). OPM's revision to § 752.201(b)(1) prescribes that, even if an employee in the competitive service who has been suspended for 14 days or less is serving a probationary or trial period, the employee has the procedural rights provided under 5 U.S.C. 7503 if the individual has completed one year of current continuous employment in the same or similar position under other than a temporary appointment limited to one year or less.

As discussed above, OPM also rescinds the changes made to § 752.201 in its April 2024 rulemaking—establishing 5 CFR 752.201(c)(7)—because it is no longer accurate based on OPM's removal of the relevant definition in 5 CFR 210.102.

Commenter 31616 argues that excluding career Schedule Policy/Career officials from subpart B of part 752 "could actually result in more terminations rather than progressive discipline," because Policy/Career employees do not have any appeal rights under subparts B and D of part 752. However, this comment is speculative. As stated above, the purpose of this rulemaking is to provide agencies with authority to address individual instances of unacceptable performance or misconduct by individual career Schedule Policy/Career officials. This amendment does not suggest that an employee performing policy-influencing duties will be indiscriminately terminated or wrongly disciplined.

Some commenters, including Commenters 13168 and 30426, argue that the rescission of § 752.201(c)(7) is contrary to law because it "misapplies" the Policy/Career exclusion, violates due process rights, and potentially subjects Federal employees to political discrimination. Commenter 34546 also claims that the recession of § 752.201(c)(7) will dissuade qualified applicants from applying for Federal jobs and wrongly affect Federal employees who have relied on the protections in subpart B of part 752. However, for the same reasons stated above, these arguments are baseless.

Part 752—Adverse Actions, Subpart D

Subpart D of part 752 implements subchapter II of chapter 75. Subpart D applies to removals, suspensions for more than 14 days, reductions in grade or pay, or furloughs for 30 days or less. Section 7511(b)(2) of 5 U.S.C. excludes from subchapter II, and thus subpart D,

excepted service employees in policy-influencing positions. This final rule revokes the changes the April 2024 final rule made to subpart D. This rule clarifies that employees reclassified or transferred into policy-influencing positions are excluded from subpart D.

Section 752.401 Coverage

Section 752.401 governs the scope of subpart D. Paragraph (c) lists the positions subpart D covers and paragraph (d) lists positions it excludes. As adopted by this final rule, OPM removes the phrases "including such an employee who is moved involuntarily into the excepted service" and "including such an employee who is moved involuntarily into a different schedule of the excepted service and still occupies that position or occupies any other position to which the employee is moved involuntarily" from throughout paragraph (c). These changes clarify that employees do not remain covered by subpart D or chapter 75 procedures if they or their positions are moved into Schedules C or Policy/Career.

Commenter 14305 argues that the amendment to § 752.401 is insufficient because it does not specifically define which positions are "confidential, policy-determining, policymaking, or policy-advocating." Commenter 14305 alleges that, as a result, § 752.401 will be applied "in arbitrary ways." As noted above, the President's actions in E.O.s 13957 and 14171 legally prohibit OPM and Federal agencies from implementing the April 2024 rule's definition of "confidential, policy-determining, policymaking, or policy-advocating." Consequently, § 752.401 aligns this section to current legal standards. Further, as discussed above, OPM has made an intentional policy choice not to regulatorily define the policy-influencing terms as they relate to Schedule Policy/Career because the CSRA, E.O. 13957, and E.O. 14171 leave such determinations to the President or the agency head based on an analysis of each employee's specific duties and functions.²⁵⁷

Commenter 33328 also argues that the amendments to § 752.401 conflict with E.O. 14284 on "Strengthening Probationary Periods in the Federal Service." However, Commenter 33328 does not identify, or otherwise establish,

²⁵⁶ See *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915) (*Bi-Metallic*) (individuals affected by generally applicable laws are accorded access to the legislative process "by their power, immediate or remote, over those who make the rule").

²⁵⁷ 5 U.S.C. 7511(b)(2)(B) authorizes OPM to determine that positions that OPM has excepted from the competitive service are policy-influencing for purposes of chapter 75. However, since the President will be effectuating transfers into Schedule Policy/Career directly this provision gives OPM no authority over whether Schedule Policy/Career positions are or are not policy-influencing.

that the removal of coverage under subpart D or chapter 75 procedures for Schedule Policy/Career officials would conflict with E.O. 14284.

Many commenters, including Comments 24540, 30426, 31616, and 34546, object to amending § 752.401's coverage for many of the same reasons that have been addressed above. These commenters argue that excluding employees who involuntarily converted to Schedule Policy/Career positions from subpart D or chapter 75's coverage may result in removals for political reasons, quash candidness among Federal employees, remove valuable Federal employees for the "wrong" reasons, and discourage qualified candidates from considering Federal employment. Commenters 30426 and 31616 maintain that the amendment to § 752.401 is invalid because it "misapplies" the Schedule Policy/Career exclusion, violates the due process rights of employees who are involuntarily converted to Schedule Policy/Career, and potentially subjects Federal employees to political discrimination. Commenter 24540 also claims that the amendment violates the merit systems principles in the CSRA. However, for the same reasons stated above, these arguments are baseless. This rule modifies paragraph (c)(7) to read "employee who was in the competitive service at the time his or her position was first listed under Schedule A or B of the excepted service and who still occupies that position." This change reflects the fact that, as explained above, employees whose positions are reclassified into a policy-influencing schedule do not retain chapter 75 adverse action procedures or MSPB appeals. However, employees moved into non-policymaking positions (i.e., Schedules A or B) are generally covered by these provisions.

Section 752.405 Appeal and Grievance Rights

Section 752.405 covers MSPB appeals of actions taken under subpart D. OPM amends § 752.405(a) to expressly state that employees in policy-influencing excepted service positions are categorically exempt from subpart D's coverage and concomitant MSPB appeals.

Some commenters, including Commenters 6205, 26433, 27258, 30426, and 35350, argue that the amendment to § 752.405 violates the long-established due process rights of Federal employees by involuntarily converting them to a career Schedule Policy/Career position and, therefore, excluding them from coverage under subpart D of part 752. For the reasons explained in Section

V.C.ii., this final rule satisfies all constitutional due process rights.

Further, Commenter 35523 objects to the amendment to § 752.405 because it does not provide a mechanism for employees to challenge an involuntarily conversion to a Schedule Policy/Career position and will, consequently, dissuade Federal employees from being forthright in the execution of their duties. However, Commenter 35523 does not identify any legal authority that permits a Federal employee to challenge the President's decision to reclassify an employee to a Schedule Policy/Career position. Further, once the President has reclassified a position to Schedule Policy/Career, OPM lacks the authority to delay the reclassification of said positions because it is a decision made by the President that OPM must implement. Also, as noted above, the President has strong incentives to keep experienced Federal employees in policy-influencing positions who do not obstruct the President's policy objectives. It also does not benefit the President to remove career employees who provide reasoned, candid advice.

Commenter 14387 also claims that OPM is acting *ultra vires* by amending § 752.405 to exclude Schedule/Policy Career positions from having MSPB appeal rights under subpart D of part 752. However, as explained in further detail in other parts of this rulemaking, the President is acting under a specific statutory authorization: 5 U.S.C. 7511(b)(2)(A). The President and OPM are thus acting *intra vires*, not *ultra vires*.

D. Agency Procedures for Moving Positions Into, or Between Excepted Service Schedules

OPM also amends 5 CFR part 212, subpart D, and part 302, subpart F, to modify the procedures for moving positions into or between excepted service schedules. Specifically, this rule removes subpart F of part 302, which was created by the April 2024 final rule. OPM also amends part 212, subpart D, to remove provisions inconsistent with the policies of E.O. 14171, as well as to clarify that competitive service employees reclassified or transferred into an excepted service schedule do not remain in the competitive service but retain their competitive status.

Part 212—Competitive Service and Competitive Status, Subpart D

Section 212.401 Effect of Competitive Status on Position

OPM revises 5 CFR part 212, subpart D, which governs the effect of an

employee's competitive status on the employee's position. This final rule removes from 5 CFR 212.401(b) the provision that "[a]n employee who was in the competitive service and had competitive status . . . at the time: (1) the employee's position was first listed under Schedule A, B, or C, or whose position was otherwise moved from the competitive service and listed under a schedule created after May 9, 2024; (2) or [t]he employee was moved involuntarily to a position in the excepted service, remains in the competitive service for the purposes of status and any accrued adverse action protections, while the employee occupies that position or any other position to which the employee is moved involuntarily."²⁵⁸

OPM proposed replacing this language in § 212.401 with a new paragraph (b) that provides that an employee who has competitive status at the time their position is first listed in an excepted service schedule, or who is moved to a position in the excepted service, is not in the competitive service for any purpose but shall retain competitive status for as long as they continue to occupy such position.

Commenter 30426 argues that, in attempting to revise the language of the half-century-old regulation, OPM has preserved language that is inconsistent with the rest of its revision. Specifically, the phrase "shall retain competitive status as long as he or she continues to occupy such position" in OPM's proposed amendment would no longer be accurate. According to the Commenter, OPM's proposed language purports to limit competitive status to the period that the employee holds the new or modified position, but competitive status is not limited to that period.

We agree and revise the final rule to "an employee who has competitive status at the time his or her position is first listed in an excepted service schedule, or who is moved to a position in the excepted service, shall retain competitive status."

Commenter 0629 expressed confusion over the operation of the revised § 212.401(b). The revised § 212.401(b) would provide that employees with competitive status whose positions are listed in or who are moved into the excepted service retain their competitive status. This would allow them to retain their basic eligibility for noncompetitive assignment to a competitive position. This proposal recognizes that employees who were hired after competitive examination and

²⁵⁸ 5 CFR 212.401(b) (2024).

have completed their probationary period have met the standards necessary for appointment to competitive positions, and that the President's decision to move their position into the excepted service does not void their earned competitive status.

Allowing employees in excepted service positions to retain their competitive status is consistent with OPM's statutory authorities. Title 5 provides that an individual may be appointed in the competitive service only if he or she has passed an examination or is specifically exempted from examination by the civil service rules. Employees with competitive status have met this standard. OPM can allow them to keep their competitive status while they encumber an excepted service position, and the Civil Service Rules currently provide for some excepted service employees to accrue competitive status.

Commenter 13602 argues that the proposed regulation causes confusion by using "competitive status" and "competitive service" at the same time, without explicitly explaining the distinction. We acknowledge how the two terms could be confused by the average reader; however, these are terms with clear, consistent, and well-defined meanings. "Competitive service" refers to all civil service positions in the executive branch except positions which are specifically excepted from the competitive service, PAS positions, or positions placed in the Senior Executive Service.²⁵⁹ "Competitive status" is "an individual's basic eligibility for noncompetitive assignment to a competitive position" that "is acquired by completion of a probationary period under a career-conditional or career appointment . . . following open competitive examination."²⁶⁰ This distinction is why, as discussed above, the proposed regulation must be modified to accurately reflect how competitive status functions when an employee occupies a position in the excepted service.

Commenter 30426 argues that it is irrational for OPM to change 5 CFR 212.401(b) to take away provisions saying employees remain in the competitive service and keep any accrued adverse action protections if their positions are newly listed in an excepted service schedule and they stay in the same position. In this regard, the Commenter argues that "OPM's proffered justification for this change is only that it believes it is legally capable of making this change, but it offers no

reason not to preserve the accrued rights of current career Federal employees other than that the administration finds it inconvenient to wait for attrition to result naturally in broadening the coverage of Schedule Policy/Career."

The regulation at issue was first enacted in 1968, when the Lloyd-La Follette Act expressly provided procedures that had to be followed to remove an employee from the competitive service. The 1968 version of 5 CFR 212.401(b) provided: "An employee in the competitive service at the time his position is first listed under Schedule A, B, or C remains in the competitive service while he occupies that position."²⁶¹ In 2024, 5 CFR 212.401(b) was revised, providing: "An employee who was in the competitive service and had competitive status as defined in 212.301 of this chapter at the time: (1) The employee's position was first listed under Schedule A, B, or C, or whose position was otherwise moved from the competitive service and listed under a schedule created subsequent to May 9, 2024; or (2) The employee was moved involuntarily to a position in the excepted service; remains in the competitive service for the purposes of status and any accrued adverse action protections, while the employee occupies that position or any other position to which the employee is moved involuntarily."²⁶² While the language was modified, the principle effect remained—employees remained in the competitive service if they occupied a position when it was first moved to the excepted service. OPM did not modify this principle in the regulation, because there was never a need to do so even with intervening exceptions of competitive service positions to excepted service positions. This lack of need was because the reclassifications ordered by Congress and the President explicitly allowed for employees in positions that were removed from the competitive service to remain in the competitive service while they continued to occupy said position.²⁶³ Therefore, the regulation was still accurate and not contrary to any legal authority. However, that changed with the issuance of E.O. 13957, as amended, which does not include any explicit exception for employees moved to Schedule Policy/Career to remain in the competitive

service.²⁶⁴ There is now legal authority that conflicts with 5 CFR 212.401(b). As such, OPM must revise that regulation to make it consistent with existing legal authority.

Similarly, multiple commenters, including but not limited to Commenters 0230, 11707, and 31616 expressed concern with moving current employees to Schedule Policy/Career, requesting that OPM allow employees to keep their current classification and switch the position to Policy/Career when it becomes vacant. Waiting for attrition to realize the benefits of Schedule Policy/Career would reduce the President's ability to hold employees accountable for misconduct, remove poor performers, effectively address policy resistance, and otherwise realize the benefits of this rule. Additionally, OPM—as discussed above—lacks the authority to delay the reclassification of occupied positions to Schedule Policy/Career because it is a decision made by the President that OPM must implement. Nothing in subchapter II allows incumbent employees to remain covered by adverse action proceedings after the President or an agency head, as applicable, determines their position is policy-influencing. Unlike other exceptions in section 7511(b) to subchapter II's coverage, the 7511(b)(2)(A) exception is not contingent on the personal status or history of incumbent employees. As a matter of law, OPM has no authority to extend subchapter II to cover employees in excepted service positions the President has determined are policy-influencing.

In this regard, Commenter 30426 argues 5 U.S.C. 7511(c) gives OPM authority to extend chapter 75 procedures to covered employees in Schedule Policy/Career. Section 7511(c) provides that OPM "may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter." In the proposed rule OPM explained that this exception was inapplicable for two reasons. First, policy-influencing positions are "otherwise covered" by subchapter II and expressly excluded. And second, this authority does not extend to positions the President excludes from the competitive service.²⁶⁵

Commenter 30426 takes issue with both points. On the first, Commenter argues that OPM misconstrues what

²⁶¹ 5 CFR 212.401(b) (1968); 33 FR 12402, 12408 (Sep. 4, 1968).

²⁶² 5 CFR 212.401(b) (2024); 89 FR 24982, 25046 (Apr. 9, 2024).

²⁶³ See E.O. 13843, 83 FR 32755, 32757 (July 13, 2018); Intelligence Authorization Act for Fiscal Year 2012, Public Law 112–87, 125 Stat. 1876, 1881 (2012).

²⁶⁴ See generally E.O. 13957, 85 FR 67631, as amended by E.O. 14171, 90 FR 8625.

²⁶⁵ 90 FR at 17199.

²⁵⁹ 5 U.S.C. 2102(a).

²⁶⁰ 5 CFR 212.301 (2025).

“otherwise covered by this subchapter” means. Commenter argues 7511(b) provides “this subchapter does not apply to an employee” meeting various criteria, while 7511(c) then expressly authorizes OPM to nonetheless “provide for the application” of subchapter II to those not covered by it (emphasis in original). Commenter, pointing to this textual analysis and caselaw, argues that “not otherwise covered” in this context has the “obvious” meaning of “not otherwise covered by the protections at issue” rather than “not otherwise referenced in this subchapter.” Upon further review, OPM accepts Commenter’s point, and concludes 5 U.S.C. 7511(c) authorizes OPM to extend chapter 75 adverse action procedures to positions that OPM has placed in the excepted service that would otherwise be excluded under section 7511(b).

However, this conclusion has no relevance to Schedule Policy/Career or this rulemaking, as the President—not OPM—will be placing positions in Schedule Policy/Career. On this point, Commenter 30426 argues section 7511(c) also allows extending adverse actions procedures to positions excluded from the competitive service by the President. Commenter argues section 7511(c) was meant to allow OPM to include under subchapter II procedures positions that the executive branch excepted from the competitive service, as opposed to legislative exclusions. Commenter contends that Schedules A and B, which were created by the President, existed at the time the CSRA passed. OPM subsequently covered Schedule B employees under subchapter II procedures, and no-one thought this was improper. Ergo, OPM extending subchapter II to employees excluded from the competitive service by the President under Schedule Policy/Career is not improper.

This argument has no foundation in the text of chapter 75, and it misunderstands the scope of OPM’s authority to extend chapter 75 protections to excepted positions. Section 7511(c) provides that OPM “may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of [OPM] which is not otherwise covered by this subchapter.”²⁶⁶

Under 5 U.S.C. 3302(1), the President has primary authority for excepting positions from the competitive service. The President has, on occasion, delegated that authority to OPM, but it principally rests with the President.

Section 7511(c) straightforwardly allows OPM to extend subchapter II to cover positions where it has used its delegated Presidential authority to except from the competitive service, such as the Schedule A positions, listed in 5 CFR 213.3102. But it does not allow OPM to extend coverage to any positions the President directly excepted from the competitive service. OPM cannot find, and the Commenter did not provide, any legal authority that section 7511(c) means anything other than its plain language. So, while the Commenter is correct that OPM can extend subchapter II to employees OPM excepted from the competitive service, the Commenter fails to acknowledge such extensions hinge on whether OPM has been delegated the authority to determine which positions are excepted. The President has provided he will directly move positions into Schedule Policy/Career; OPM does not control those determinations.²⁶⁷ Therefore, section 7511(c) does not give OPM authority to extend subchapter II to positions directly excepted by the President.

OPM acknowledges, as Commenter 30426 points out, that Schedules A and B were created by E.O. However, the creation of a schedule does not by itself put specific positions into that schedule. The act of creating an excepted service schedule is legally distinct from the act of putting positions in that schedule. In fact, E.O.s 9830 and 10577, creating the modern Schedules A and B, explicitly delegated authority to the CSC to place positions into those schedules.²⁶⁸ So it is simply not the case that most Schedule A or B positions were excepted from the competitive service by the President. The President created those schedules, but individual positions were often put in it by the CSC, and then OPM. For example, an OPM rulemaking following the CSRA’s passage regulates the positions currently in Schedule A.

Section 7511(c) gives OPM authority to extend subchapter II to otherwise excluded Schedule A and B positions that it has regulatorily excepted from the competitive service. Those schedules were created by executive order, but specific positions were placed

in those Schedules through OPM regulations.²⁶⁹

Schedules A and B stand in contrast to E.O. 13957, as amended, which not only created Schedule Policy/Career but maintained that the President would place individual positions in it.²⁷⁰ This is similar to E.O. 13843, which created Schedule E and excepted all subsequently hired administrative law judges (ALJs) from the competitive service placing them in Schedule E.²⁷¹ OPM has no role in placing positions in Schedule E. Additionally, in that situation, the President—not OPM—explicitly provided that ALJs “who are, on July 10, 2018, in the competitive service shall remain in the competitive service as long as they remain in their current positions.”²⁷²

Commenter 30426’s misunderstanding of the distinction between how excepted service schedules are created and how individual positions get placed in those schedules leads him to conclude 7511(c) authorizes OPM to extend subchapter II to positions the President has placed in the excepted service. Commenter believes that, since 7511(c) was drafted to allow OPM to extend subchapter II to schedule A and B positions, and those schedules were created by executive order, OPM can also extend subchapter II to positions the President has directly placed in the excepted service.

This is a *non sequitur*. For the reasons discussed above, OPM has no such authority. Section 7511(b)(2) categorically excludes from subchapter II’s coverage any excepted service positions an appropriate authority has determined are policy-influencing. Section 7511(c) only permits OPM to extend subchapter II to cover positions it—but not the President—has placed in the excepted service. Section 7511(c) thus does not extend to positions that the President, at a future date, places in Schedule Policy/Career. As such, the proposed changes are necessary to align regulations with OPM’s statutory authority—*i.e.*, OPM cannot extend subchapter II to cover positions Congress or the President excluded from the competitive service. The revised regulation instead reflects the reality that employees Presidentially converted from the competitive service to the excepted service, in positions the

²⁶⁷ See E.O. 14171, 90 FR at 8626 (“The Director shall promptly recommend to the President which positions should be placed in Schedule Policy/Career.”).

²⁶⁸ See, e.g., E.O. 10577, 19 FR 7521, 7524 (“The Commission is authorized to except positions from the competitive service whenever it determines that appointments thereto through competitive examination are not practicable.”); *id.* (“Positions excepted by the Commission shall be listed in Schedule A, B, or C as provided in section 6.2 of this Rule . . .”).

²⁶⁹ See 5 CFR 213.3102 and 47 FR 28901, 28902–04 (July 2, 1982).

²⁷⁰ See generally E.O. 13957, 85 FR 67631, as amended by, E.O. 14171, 90 FR. 8625.

²⁷¹ E.O. 13843, 83 FR at 32756 (“Conditions of good administration warrant that the position of administrative law judge be placed in the excepted service.”).

²⁷² *Id.* at 32757.

²⁶⁶ 5 U.S.C. 7511(c).

President has determined are policy-influencing, are statutorily excluded from subchapter II.

Additionally, even if Title 5 did not compel this result—and OPM believes it does—OPM would use its discretion to exclude incumbents in positions converted to Schedule Policy/Career from coverage under subchapter II. Doing so supports the policies of the President and the administration, for the reasons discussed throughout the proposed rule and this rulemaking.

Lastly, Commenter 31616 asserts the revised § 212.401 violates *Loudermill*. As discussed in greater detail below, *Loudermill* does not apply as there is no statutory basis for conveying property rights for employees appointed to Schedule Policy/Career positions.

Part 302—Employment in the Excepted Service, Subpart F

Implemented as part of the April 2024 final rule, Subpart F to part 302 prescribed procedures for moving positions into or between excepted service schedules. In this final rule, OPM removes subpart F in its entirety because E.O. 14171 has rendered subpart F unenforceable and without effect.

OPM issued subpart F using delegated Presidential authority. In E.O. 14171, the President used this authority to render subpart F unenforceable and without effect. This Presidential directive is self-executing, taking precedence over OPM's subpart F regulations. While OPM can modify the civil service regulations using delegated Presidential authority, the President can directly use his constitutionally and statutorily vested authority to override those regulations. OPM and MSPB are now lawfully prohibited from giving effect to subpart F. Consistent with this self-executing Presidential directive, E.O. 14171 terminated MSPB appeal rights under subpart F. Both OPM and MSPB's regulations providing for appeals under subpart F are now obsolete. OPM therefore removes these regulations to avoid confusing Federal employees about applicable legal requirements. OPM has determined that it would not be beneficial to retain obsolete and unenforceable regulations. OPM notes that MSPB will need to make conforming amendments to its regulations at 5 CFR 1201.3(a)(12).

Commenter 30426 argues that “[a]lthough the president might arguably have had authority to issue a regulation of his own, he cannot circumvent the APA merely by purporting to suspend enforcement of a regulation that OPM issued through notice-and-comment rulemaking.” OPM

does not have direct statutory authority to regulate employment in the excepted service. OPM's part 302 regulations were issued using delegated Presidential authority under 5 U.S.C. 3301 and 3302, as OPM acknowledged both in the April 2024 final rule and the proposed rule. The President can directly undo agency actions taken using delegated Presidential authority. There is no requirement that the President act through OPM when regulating the excepted service. The President can and often chooses to do so, but nothing in the law requires him to do so. If the President wishes to directly order agencies to give “no force or effect” to regulations issued under his authority he may do so. When he issues such an order, that directive supersedes the prior regulations. OPM is accordingly prohibited from giving effect to the prior subpart F regulations.

Commenter 0656 argues that E.O. 14171 violates the doctrine of separation of powers by terminating MSPB appeal rights under subpart F without having undergone the processes defined in the Administrative Procedure Act. OPM rejects this conclusion. It is well established, that when the President acts directly he is not bound to follow APA procedures.²⁷³ Regulations under part 302 were only enacted using delegated Presidential authority under sections 3301 and 3302 of 5 U.S.C. OPM acknowledged this when enacting the April 2024 final rule. The President may undo actions that OPM has previously enacted under his delegations. Regardless, OPM is following APA notice and comment procedures when following the President's directive to remove now legally obsolete language from the CFR.

Commenter 30426 also argues that E.O. 14171 left OPM discretion as to the action it should take. Commenter 30426 misreads the operative language in the E.O. By its very terms—“[u]ntil such rescissions are effectuated”—E.O. 14171 asserts that no rescission has occurred. The order expressly leaves it to OPM to rescind regulations. But the order qualifies that directive to rescind regulations by providing OPM the discretion to do so only to the extent that OPM determines, in its discretion, that its existing regulations “impede the purposes of or would otherwise affect the implementation of Executive Order 13957.” This qualification of the president's directive to OPM grants OPM discretion to determine which parts of its regulations pose an

impediment and to determine how best to address that perceived impediment.

OPM does not have discretion to retain subpart F. Subpart F was part of a rulemaking whose express purpose was, and was openly acknowledged as, frustrating a future administration's ability to reinstate E.O. 13957 without affected employees retaining adverse action appeal rights. Subpart F imposes procedural hurdles to moving positions into Schedule Policy/Career and requires agency attestations that employees so moved would retain adverse action appeals. It plainly impedes the purposes and would affect the implementation of E.O. 13957. Accordingly, OPM has been directed to rescind subpart F, which was issued under delegated Presidential authority. Until such rescission is completed neither OPM nor any other agency can give subpart F force and effect.

The White House has confirmed this interpretation. The text of E.O. 14171 includes the provision—“impede the purposes of or would otherwise affect the implementation of [E.O.] 13957”—that allows OPM to retain language the 2024 Final rule made to subpart B of part 752 to conform to Federal Circuit decisions in *Van Wersch v. Department of Health & Human Services*²⁷⁴ and *McCormick v. Department of the Air Force*.²⁷⁵ It does not authorize OPM to retain provisions like subpart F designed to frustrate the purposes of E.O. 13957.

Even if OPM had discretion to keep subpart F in effect, OPM has determined several factors justify its rescission. First, subpart F was expressly adopted as part of the prior administration's policy of preventing the reinstatement of E.O. 13957. Commenter 30426 argues that the mere change in administration is not a sufficient justification for changing course. This is misguided. Elections have consequences, and Federal policy has changed with the election of a new President. OPM is removing subpart F to prevent the prior administration from impeding the current administration's priorities. The President is head of the executive branch and is constitutionally and statutorily vested with primary authority over the Federal workforce. OPM exists to support the President in performing those duties. A change in Presidential policy directives fully justifies OPM changing course.

Second, 5 U.S.C. 3302 gives the President primary responsibility for placing positions in the excepted or competitive services. OPM only excepts

²⁷³ *Franklin v. Mass.*, 505 U.S. 788, 800–01 (1992).

²⁷⁴ 197 F.3d 1144, 1151 (Fed. Cir. 1999).

²⁷⁵ 307 F.3d 1339, 1341–42 (Fed. Cir. 2002).

positions using delegated Presidential authority. E.O. 14171 set up a process for the President to place positions in Schedule Policy/Career based upon recommendations from OPM and agency heads. Even if that order had not directly overridden subpart F, it would be inconsistent with this hierarchy of authority for OPM to use delegated Presidential authority to purport to limit the President's direct exercise of section 3302 authority. Commenter 30426 also argues that this inconsistency does not actually provide a rationale for rescinding subpart F, as nothing in subpart F "impede[s] Presidential authority." Commenter argues that subpart F and the executive orders can co-exist. This is misguided. Subpart F establishes procedural requirements for Presidential movements of positions into excepted service schedules, such as obtaining certification from the Chief Human Capital Officer (CHCO) that the movement of positions is consistent with merit system principles, submitting the CHCO certification to OPM for review, and initiating any hiring actions under the excepted service authority after OPM publishes any such authorizations in the **Federal Register**. 5 CFR 602.602(b). The President can directly effectuate transfers into the excepted service. OPM regulates here with delegated Presidential authority. It is not OPM's place to limit or restrict how such direct Presidential transfers are effectuated.

Third, OPM regulations cannot create an entitlement to adverse action procedures that are denied by statute. Subpart F requires agencies to notify employees who are moved or otherwise involuntarily transferred into Schedule F (now Schedule Policy/Career) that they remain covered by chapter 43 and 75 procedures and appeals. Subpart F also authorizes MSPB to order agencies to continue to apply such procedures, and to order agencies to correct any deficient notifications. However, as discussed above, employees that the President reclassifies or transfers into a policy-influencing excepted service position do not fall within the scope of chapter 75 as a matter of law. Section 7511(b)(2)(A) of Title 5, U.S. Code, precludes chapter 75 coverage and subsequent MSPB appeals for employees in Schedule Policy/Career, regardless of how they were notified of their reclassification. OPM cannot extend MSPB jurisdiction to appeals that are prohibited by statute. Nor can MSPB require agencies to apply chapter 75 procedures to employees who are statutorily excluded from that chapter's coverage.

Commenter 30426 also contends that subpart F does not transfer decisional authority from the President to subordinate officers, since § 302.602(b)(3) requires only that CHCOs certify that "movement is consistent with the standards set forth by the directive, as applicable, and with merit systems principles." Commenter argues that OPM provides no support for its contention that some CHCOs may be unwilling to issue certifications necessary to transfer positions into Schedule Policy/Career upon direction from the President. However, under the current regulations, a Presidential transfer into Schedule Policy/Career cannot go into effect unless the CHCO certifies that it complies with Merit System Principles. Many CHCOs are career employees who can only be dismissed for cause. It is not clear that refusing to sign a certification the CHCO did not believe was accurate would constitute cause. The point has not been tested—and will not be because the rules are currently without effect—but it is reasonable to be concerned that some CHCOs would decline to make the relevant certifications.

Section 302.603 similarly authorizes MSPB appeals over movements or transfers into Schedule Policy/Career. Subpart F noted "that an individual may choose to assert in any appeal to the MSPB that the agency committed procedural error, if applicable, by failing to act in accordance with the procedural requirements of § 302.602 while effecting any placement from the competitive service into the excepted service or from the excepted service to a different schedule of the excepted service." These procedures would allow MSPB to overturn a Presidential decision to place positions into Schedule Policy/Career. Commenter 30426 denies that this amounts to a transfer of decisional authority from the President to subordinate officers at MSPB, arguing the litigation would only concern whether employees retain their accrued status and adverse action procedures—not which positions go in Schedule Policy/Career. However, allowing MSPB litigation over whether Schedule Policy/Career employees retain adverse action appeals would give MSPB decisional authority over which positions can be functionally classified as Schedule Policy/Career. An employee can be technically in a Schedule Policy/Career position, but if the employee retains adverse action appeals, the benefits are neutralized. The regulations thus give MSPB control over where Schedule Policy/Career

takes effect, possibly in contradiction of a Presidential directive.

In the April 2024 rule, subpart F was added as part of the prior administration's effort to stymie the reintroduction of anything like Schedule F without the retention of adverse action appeal procedures. OPM now believes that, with the change in administration and administration policy, control over the Federal workforce should remain with the official constitutionally and statutorily vested with that authority—the President. OPM does not believe its regulations should give subordinate agency officials the functional ability to countermand a Presidential directive to place positions in Schedule Policy/Career. Even if the President had not directly rendered subpart F inoperative, OPM would propose these changes to restore authority to the official constitutionally vested with it and democratically accountable to the American people. The purpose of Schedule Policy/Career is to remove adverse action appeals and facilitate greater accountability to the President.

Commenter 30426 argues that OPM has provided no support for its contention that these procedural steps and MSPB appeals would produce protracted litigation or confusion, and that OPM has not adequately weighed the benefits of such procedural steps and appeals for impacted employees against the benefits of "certainty and dispatch." As explained above, the appeal process afforded most Federal employees is protracted and can take years for full resolution. Further, the "benefits" that commenter discusses are delaying the effective implementation of Schedule Policy/Career. OPM considers this a cost, not a benefit.

Commenter 34928 argues the removal of subpart F could lead to the politicization of Federal employment and result in a high turnover rate. As explained above and in the proposed rule, E.O. 14171 and this final rule flatly reject the notion that Schedule Policy/Career will politicize the Federal service or lead to high turnover. Regarding the issue of turnover, OPM notes that the positions placed in Schedule Policy/Career will likely be among the more senior positions available throughout the Federal Government. Civil servants called to serve in these positions will be able to work closely with the most senior members of a presidential administration and make decisions or influence policy affecting the United States and abroad. OPM believes this call to service will invigorate a workforce dedicated to protecting and promoting the well-being of the

American people. If the cost is rooting out those employees bound to impede this objective, then the final rule had its intended effect—removing undemocratic resistance and restoring faith in the civil service.

Authority Citations

OPM is revising the authority citations for parts 210, 212, 213, 302, and 752 to comply with 1 CFR part 21, subpart B. This rule also updates the citations by adding current authorities and removing obsolete citations.

E. Retaining Career Hiring Procedures

E.O. 13957, as amended, directs OPM to provide for the application of Civil Service Rule 6.3(a) to Schedule Policy/Career positions.²⁷⁶ Consistent with Rule 6.3(a), this final rule modifies 5 CFR part 302, subpart A (Employment in the Excepted Service) to clarify that appointments to Schedule Policy/Career positions will be made using the hiring procedures that would have otherwise been used had the position not been moved into Policy/Career. Positions moved into Schedule Policy/Career from the competitive service will continue to be filled using merit-based competitive hiring procedures, and positions moved from the excepted service will continue to be filled using excepted service procedures. Under this provision, a position's movement into Schedule Policy/Career will not affect how it is filled.

§ 302.101 Positions Covered by Regulations

Part 302 prescribes procedures governing excepted service hiring, and 5 CFR 302.101(c) lists exemptions from these procedures. These exemptions include certain positions included in Schedule A for which OPM agrees with the agency that the positions should be excluded.²⁷⁷ OPM notes that it cannot legally extend competitive hiring procedures to some excepted service positions in Schedule A. For example, all Federal attorney positions are listed in Schedule A because a longstanding appropriations rider prohibits spending money to competitively examine lawyers.²⁷⁸ That rider will continue to prohibit competitive examinations for

any attorney positions moved into Schedule Policy/Career.

§ 302.102 Method of Filling Positions and Status of Incumbent

In the proposed rule, OPM added a paragraph (d) to 5 CFR 302.102 that will provide that a position's movement into Schedule Policy/Career will not affect how it is filled. More specifically, the regulations will provide that agencies shall make appointments to positions in Schedule Policy/Career in the same manner as positions in the competitive service, unless such positions would, but for their placement in Schedule Policy/Career, be listed in another excepted service schedule. In this final rule, OPM incorporated these changes into 5 CFR 213.3601 to better streamline the regulations specific to Schedule Policy/Career. Therefore, the final rule will not include a paragraph (d) in 302.102.

Under these regulations, Schedule Policy/Career positions will by default be filled using the procedures applicable to the competitive service. Excepted service procedures will only be used if the position would have otherwise been placed in the excepted service. So, for example, agencies can still use excepted service procedures to hire applicants with severe disabilities into Policy/Career positions. Such positions would otherwise be placed in Schedule A, so agencies may continue to use excepted service procedures. But agencies will continue to apply merit-based competitive hiring procedures to positions moved into Schedule Policy/Career from the competitive service.

Commenter 30426 argues that as a practical matter, nothing in OPM's proposed regulations would restrain the administration from hiring Schedule Policy/Career appointees based on their political affiliation. Merit-based competitive hiring procedures generally forbid consideration of political affiliation. So does E.O. 13957, as amended. If the administration wanted to hire based on political affiliation the President could have turned these into political appointments and expressly authorized filling these positions based on political affiliation. He instead did the opposite, directing his subordinates to help him carry out the law and execute his agenda, regardless of their political affiliation.

Commenter 30426 also argues that OPM does not explain how it will track the determination as to which procedures apply after an initial incumbent leaves a Schedule Policy/Career position or in the event of a subsequent reorganization in an agency,

and that OPM does not explain how it will determine whether a newly created position would have been in the excepted service but for its inclusion in Schedule Policy/Career. Such determinations will be based on the nature of the position and whether other similar positions are in the excepted service. For example, all attorney positions will be treated as positions that would otherwise be in the excepted service because they would otherwise go in Schedule A. OPM will handle these through post-implementation guidance; these procedures do not need to be written into regulation.

Commenter 30426 also argues that if these positions are not too sensitive for ordinary recruitment procedures, they are not too sensitive for ordinary retention procedures. This is a non-sequitur. Different considerations motivate hiring procedures and removal restrictions. Removal restrictions facilitate accountability for the use of government power, while merit-based hiring procedures help the government hire the best applicants.

V. Addressing Further Objections

As explained in Section II, OPM received more than 40,500 comments regarding this rulemaking whereby commenters provided a breadth of useful insights into various aspects of these regulatory amendments. The comments below relate to general concepts regarding the civil service, civil service protections, and merit principles that inform this rulemaking, and how Schedule Policy/Career will improve the civil service.

A. Schedule Policy/Career Rejects Patronage

Many commenters argue that Schedule Policy/Career embraces a return to the patronage system where agencies will fire en masse career employees in favor of political loyalists. As explained below, the President and OPM reject these fears as pure speculation.

i. Agencies Will Not Engage in Mass or Political Firings

Several commenters predict “mass” or political dismissals of career staff under Schedule Policy/Career. Commenters 14213, 16152, 23876, 26587, 26893, 30166, 30426, and others, argued that Schedule/Policy Career personnel will be effectively made political appointees. Commenters argued that this rule is an attempt to “abolish the professional civil service and convert it to a patronage system,” in reference to resurrecting the patronage or spoils system of the past,

²⁷⁶ E.O. 13957, 85 FR at 67633; E.O. 14171, 90 FR at 8625.

²⁷⁷ 5 CFR 302.101(c)(6).

²⁷⁸ Admin. Conf. of the U.S., Recruiting and Hiring Agency Attorneys, at 3, (Dec. 12, 2019), <https://www.acus.gov/sites/default/files/documents/Proposed%20Recommendation%20for%20Plenary%20CLEAN%20.pdf> (citing *Memorandum Op. for the Assoc. Attorney General*, 2 Op. O.L.C. 179 (1978)).

whereby the President would replace qualified career employees en masse with unqualified political loyalists. They further argue that replacement of career employees with political loyalists would reduce or eliminate expertise within the Federal bureaucracy and degrade agencies' capacity to deliver on their missions and effective government operations. They also argued that would hurt agency recruitment and retention, as experienced professionals would be less likely to seek or remain in jobs where political affiliation was perceived to be a condition of employment. Some commenters argues that the rule ignores Merit System Principles codified at 5 U.S.C. 2301(b). Commenter 30426 speculates that the President will fire Schedule Policy/Career employees regardless of performance or conduct as he supposedly did to probationary employees. After considering these comments, OPM concludes that these fears are misplaced.

There is nothing in the final rule that suggests, and in fact the rule flatly rejects the notion, that positions in Schedule Policy/Career are "political appointments." Under E.O. 14171, President Trump established a policy of restoring accountability to the executive branch, where Federal employees who occupy policy-influencing positions have in some cases previously demonstrated resistance to directives of their executive leadership, in other cases engaged in serious misconduct or corrupt behavior, and in other cases underperformed. In the proposed rule, OPM estimated that approximately 50,000 employees, or approximately 2 percent of the Federal workforce, could be impacted by the rule. This small percentage of positions contrasts with the early days of the Pendleton Act which reduced the patronage labor force in the Federal Government to 50 percent in 1904.²⁷⁹ If the President truly wanted to return the Federal workforce to a patronage system, he could simply move the Federal workforce to positions in Schedules C or G en masse, with no need for Schedule Policy/Career. The President did not do so because that is not his policy objective. Executive Order 13957, as amended, rejects the spoils system, which is now a part of distant past and essentially beyond living memory.

Additionally, dismissing career employees holding positions under Schedule Policy/Career who perform their duties with efficiency and integrity, of whom there are many, would render vacant key positions necessary to implement the President's

agenda and deprive the President of the assistance of these key employees. The President and members of his administration rely crucially on such experienced and effective career employees to implement his agenda. E.O. 13957 recognizes this expressly in noting that "[t]he Federal Government benefits from career professionals in positions that are not normally subject to change as a result of a Presidential transition but who discharge significant duties and exercise significant discretion in formulating and implementing executive branch policy and programs under the laws of the United States." Both E.O.s 13957 and 14171 recognize the value of a career civil service whose members are selected and retained based on merit, not political affiliation. They simply seek to ensure heightened accountability for employees in key policy-influencing roles.

To provide this accountability, and in light of longstanding, well-documented concerns about the accountability of career employees holding these crucial roles, both the President and OPM believe that additional leeway is needed to allow agencies to swiftly remove employees holding policy-influencing positions—even at the cost of removing some procedural protections against removal that these employees would otherwise enjoy. Congress expressly allowed the President and OPM to make this choice by allowing the President and OPM to except policy-influencing employees from the adverse action procedures in chapter 75 and similarly exempting these employees from the provisions of 5 U.S.C. 2302.

Further, it would be inappropriate for an agency to use the authority under this final rule as a tool to broadly reconstruct its workforce or as a reduction in force (RIF) avoidance tool. Congress explicitly provided agencies with RIF authority in Title 5, Chapter 35. OPM's RIF regulations and procedures will continue to apply to, and protect, Schedule Policy/Career employees, requiring that RIFs affecting these employees be carried out fairly and providing for appeal rights.²⁸⁰ OPM additionally has broad powers under those rules to review an agency's RIF plans "at any stage" and take corrective action regarding reduction-in-force actions that violate the "spirit and intent" of its RIF regulations or violate "employee rights or equities."²⁸¹ This final rule is intended to provide agencies with authority to address individual instances of unacceptable

performance or misconduct by individual Schedule Policy/Career employees whose duties and responsibilities are policy-influencing. When an agency intends to release or terminate an employee, or many employees, under conditions that may be described in 5 CFR part 351, the agency should follow those procedures, or similar procedures under similar authorities.

Additionally, this rule does not dilute or negate merit as a basis for appointment into the civil service. Schedule Policy/Career will continue to use merit-based, competitive hiring procedures when appointing personnel in positions subject to this rule. Unlike the patronage system that operated based on political affiliation, this rule does not authorize agencies to consider political affiliation during any part in the appointment process for these positions, nor could they, as merit-based assessments of candidates without regard to political considerations will be the only basis for ratings, rankings, and appointment. OPM added a new section 5 CFR 213.3501 to subpart C of 5 CFR, covering appointments to Schedule Policy/Career within the excepted service. Schedule Policy/Career covers "career positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not in the Senior Executive Service." Since 5 CFR 213.101 specifically defines "career position" to exclude noncareer appointments, it is abundantly clear that political appointees cannot be placed in positions under Schedule Policy/Career. This language, as well as the schedule's name, clearly articulates that this rule is not to be used for patronage purposes and applies only to career employees hired on the basis of merit. E.O. 13957 also definitionally prohibits the White House office that selects political appointees from having any role in filling Schedule Policy/Career positions.

Moreover, a return to the spoils system would frustrate the purpose of the rule and of E.O. 14171. Improving the accountability of policy-influencing employees within the executive branch facilitates effective Presidential management of, and reduces insubordination, poor performance, and corruption in the Federal civil service. That purpose is not served by, and in fact would be undermined by, a return to patronage practices that undermine agency capacity. As established by E.O. 14171 and incorporated into the rule, employees appointed to positions in Schedule Policy/Career are not required to take a pledge of personal loyalty to the President or his policies. Rather, employees are required to diligently

²⁸⁰ See 5 CFR 351.202.

²⁸¹ 5 CFR 351.205.

²⁷⁹ Johnson & Libecap at 12.

implement and advance, to the best of their ability, the policies of the President and his administration. This is the opposite of the patronage system, which subjected employees to dismissal upon a Presidential transition based on political affiliation alone, irrespective of their performance. Section 6 of Executive Order 13957, as amended, further requires agencies to establish and enforce internal policies prohibiting hiring or firing based on political affiliation (or any other grounds for a PPP such as whistleblower reprisal).

OPM notes that the President has strong motivation to enforce the prohibition of loyalty pledges or terminations based upon political affiliation. As OPM and commenters previously noted, hiring less qualified personnel reduces Federal administrative capacity and efficiency. Replacing experienced career employees who are faithfully implementing Presidential directives with inexperienced political appointees would make it significantly more difficult for him to carry out his agenda. If some officials nonetheless treat Schedule Policy/Career positions as noncareer positions, OPM can help the President address that problem, if and when it arises. OPM will be heavily involved in the implementation of Schedule Policy/Career. If necessary, OPM can recommend additional measures to prevent abuse. But currently hypothetical concerns that agency personnel will ignore a Presidential directive are not grounds for failing to implement an executive order.

ii. Experiences of State Governments Reforming Their Civil Service Refute Fears of Politicization and Mass Firings

Commenters 17824, 19350, 19352, 26673, 32359, and many others, noted that Schedule Policy/Career follows the practices of a number of state government that have converted much of their career workforce into “at-will” employees. These commenters point out that evidence shows these reforms have been beneficial and concerns about a return to the spoils system have not materialized. For example, surveys of state personnel directors show generally positive evaluations of at-will employment in state government without reports of states returning to patronage practices.

OPM appreciates these comments. As the commenters noted, the literature indicates that more than 20 states have converted all or a part of their workforce

into “at will” employees.²⁸² The results experienced so far have been largely successful. States such as Arizona, Florida, Georgia, Indiana, Mississippi, Missouri, Texas, and Utah have instituted Schedule Policy/Career type reforms and concluded that their evaluations of results have been generally quite positive. There has been no indication of any return to a patronage type of appointment system in these states. Upon consideration of these comments OPM concludes the experiences of states with at-will workforces provides another reason to reject concerns this rule will lead to a return to the spoils system, reduce administrative capacity, hurt recruitment and retention, or otherwise impair government operations. Many states have adopted similar reforms at the state level. Not only have these concerns not materialized, these states have seen beneficial effects. OPM concludes these states’ experiences demonstrate that at-will employment is fully compatible with an effective and highly functioning career government workforce. OPM believes that bringing at-will employment to a small portion of the Federal workforce will be similarly beneficial.

Moreover, states that have adopted so-called “at will” employment practices for their public employees have noted improved employee responsiveness to agency initiatives and service delivery. For example, in Mississippi, a state that partially adopted “at will” employment, human resources directors reported that at-will employment improved employee responsiveness to the goals and priorities of agency administrators (60% agree/17% disagree), provided motivation for employee performance (56% agree/20% disagree), improved agency efficiency (53% agree/27% disagree), ensured managerial flexibility (54% agree/19% disagree), and represented an essential piece of modern government management (58% agree/15% disagree).²⁸³

Regarding removals, human resources directors also overwhelmingly agreed that at-will terminations were for good cause (86% agree/5% disagree), and a

large majority indicated that at-will employees were terminated due to poor performance (82% agree/5% disagree).²⁸⁴ Terminations were not arbitrary.

OPM also finds it notable that commenters did not produce evidence from the specific experiences of state governments that shifted to at-will employment for their state workforces that they returned to a system of patronage, or that they experienced reduced administrative capacity, or similar harmful effects. For example, Commenter 26673 cited to a journal article highlighting the changes in Georgia and Florida but relied upon generic criticisms of removing civil service protections. Commenter 26673, like many others, failed to point to empirical evidence of harms specific states experienced with a move to at-will employment. Given the strong opposition this rule has engendered in some quarters, OPM takes opponents’ silence on this point as suggestive there is little evidence at-will state employment has produced negative effects or produced a return to patronage practices. The available evidence instead affirmatively indicates it has not had this effect. This again suggests the same policy would not produce such effects at the Federal level.

In OPM’s analysis of comments related to state personnel reforms as part of the 2024 rulemaking, OPM chose to give greater credibility than OPM now believes was warranted to a comment that asserted that a survey of one state’s civil service reforms had engendered dissatisfaction among some employees rather than the considered assessments of human resource directors in the states that have implemented reforms. It is not surprising that individual employees will see such reforms differently than state personnel directors. Individual employees are focused on their own benefits and do not see the enterprise-wide effect of policy reforms. In contrast, state personnel directors, who have responsibility for service delivery across a broad array of governmental functions, take a more enterprise-wide view of the benefits of managing a nimbler and more responsive workforce. Upon reconsideration, and reviewing comments 17824, 19350, 19352, OPM believes it was too quick to seize upon this one survey in the prior rulemaking. OPM now recognizes that it severely discounted the conclusions of state human resources directors who support the flexibility and modern management practices reflected in this rule. OPM erred in giving greater weight to the

²⁸² See Judge Glock and Renu Mukherjee, *Radical Civil Service Reform is Not Radical: Lessons for the Federal Government from the States*, Manhattan Inst. (Mar. 4, 2025), <https://manhattan.institute/article/radical-civil-service-reform-is-not-radical-lessons-for-the-federal-government-from-the-states>, at 1, 21 n.2.

²⁸³ James Sher and Jacob Sagert, *At-Will Employment in the Career Service Would Improve Mississippi State Government*, Am. First Pol’y Inst. (Nov. 3, 2022), <https://www.americafirstpolicy.com/issues/20221101-at-will-employment-in-the-career-service-would-improve-mississippi-state-government>.

²⁸⁴ *Id.*

alleged viewpoints of employees who were made “at-will” rather than the more strategic assessments of state authorities responsible for managing their respective workforces.

iii. OPM Will Monitor Compliance

Commenters 0210 and 30426 argue that E.O. 13957’s provisions that require agencies to administratively protect Schedule Policy/Career employees from the same PPPs covered by 5 U.S.C. 2302 provide no enforcement mechanism to protect employees from whistleblowing. They argue that forcing employees to bring concerns about violations of merit systems principles by Trump appointees to Trump appointees in the same agency, in the absence of enforceable whistleblower protections and other safeguards, would leave them entirely dependent on the administration’s good will toward career employees.

Commenters do not consider that the President relies on Schedule Policy/Career employees to provide guidance on highly sensitive matters, implement Presidential policies and prerogatives, and otherwise carry out executive functions on behalf of the President. The President has determined that creation of Schedule Policy/Career will ensure a high level of accountability to effectively supervise the executive branch. As OPM noted in the proposed rule and discussed extensively above, the President has strong incentives to keep and protect talented, experienced Federal employees in policy-influencing positions as long as these employees do not inhibit Presidential policy administration. The President has ample constitutional tools to address political appointees who ignore written directives and in so doing undermine their agencies’ abilities to carry out the President’s policies. Further, OPM will monitor agencies’ compliance with E.O. 13957, as amended, and these regulations, and take appropriate action if necessary. OPM will detail in supplementary guidance to agencies when implementing this final rule on how it plans to oversee compliance.

B. Bureaucratic Autonomy Undermines Democracy

As explained throughout this final rule, one of the core problems this rule addresses is resistance from career bureaucrats to the implementation of the President’s agenda. The proposed rule cited to several sources documenting resistance the President Trump’s first term. Commenters 29987, 30426, 35543, 35478 and others argue that the proposed rule’s reliance on the America First Policy Institute’s Tales from the Swamp report referenced in

the proposed rule undermines the basis for this rulemaking. They argue that the reports of resistance and obstruction are meritless and debunked, and its analysis is unreliable. These commenters argue that a small number of anecdotes within a few agencies, and dating as far back as the Reagan administration, do not provide sufficient evidentiary support to assert that the Federal Government suffers from a widespread problem of Federal employees resisting Presidential policy changes.

OPM explained in the proposed rule that it was not persuaded by these criticisms of the report, as much of the “debunking” addressed ancillary and unrelated issues to those raised in the report.²⁸⁵ For example, commenters 30426 and 35543 criticized the report in highlighting an instance at the General Services Administration (GSA) in which career staff leaked a copy of a draft executive order concerning promotion of classical architecture during the first Trump administration. The so-called debunking of this report centered on several unrelated arguments. First, Commenter 30426 argued the executive order was bad policy and therefore appropriately controversial, necessitating leaking to the public. While the GSA career staff was free to disagree with the policy, disagreement over policy is not an appropriate excuse for career employees to subvert or otherwise undermine the agenda of a democratically elected President. Second, commenters contended that there is a lack of direct evidence that a career employee leaked the draft executive order. However, commenters fail to offer any evidence rebutting the report that the career employee leaked the draft executive order from his personal email account. OPM has also discussed this report with an official from the first Trump Administration who was familiar with the situation. That official verified the accuracy of the America First Policy Institute’s reporting of the incident.

The same America First Policy Institute report included other examples of Federal career employees who resisted changes instituted by the first Trump Administration. For example, the report documented how career staff in the Department of Justice Civil Rights Division opposed, and stonewalled, an investigation into Governor Andrew Cuomo’s requirement that New York nursing homes admit patients infected with COVID-19, and, later, covered up

the resulting surge of deaths occurring in nursing homes in the state. Commenters criticizing the America First Policy Institute report claimed career staff appropriately questioned the investigation requests, asserting that the investigation itself was conducted for partisan political reasons, and that it was improper and a violation of Department policies to publicize the existence of the investigation in an election year.

Again, the America First Policy Institute rebuts these criticisms, to which commenters fail to provide adequate rebutting argument. The report explains that the Department of Justice investigated states that had a policy of requiring nursing homes to admit residents infected with COVID-19. These states were primarily, but not exclusively, run by Democrat governors. In fact, the Department of Justice also investigated Massachusetts, which implemented a similar policy under the direction of a Republican governor. That the Justice Department made a policy decision to investigate these states, many of which so happened to have Democrat governors, does not mean the investigations were political. Rather, the Department of Justice was focused on the consequences of policies that put the elderly at risk, and its investigation covered states run by both parties. The report also noted that the Department of Justice followed standard protocol in announcing the investigation.

The report further argued that career employees in the Civil Rights Division’s Educational Opportunity Section (EOS) would not assist with litigation challenging Yale University’s use of racial preferences. As OPM explained in the proposed rule, it is a publicly verifiable fact that no EOS career attorneys participated in the Yale litigation, despite this being the section of the Civil Rights Division with responsibility for litigating against racial discrimination in educational institutions. OPM takes this evidence as supporting the accuracy of the report that, at least in this case, career EOS attorneys would not help advance litigation they personally opposed. Commenters do not offer a persuasive alternative explanation for why, if career EOS attorneys performed their duties in an impartial manner, none of them participated in this case.

The America First Policy Institute report also highlighted other instances of Federal employees attempting to resist and undermine the policy directives of President Trump in his first administration. The report documented that career staff at the Department of Education intentionally

²⁸⁵ OPM also notes that commenters appear to be referencing an earlier version of this report. Some of commenter’s criticisms are not relevant to the January 8, 2025, version of the report that OPM discussed in the proposed rule.

delayed priority rulemakings and produced drafts that did not reflect the policy directives they were given. As a result, administration priority rules such as Title IX regulations had to be drafted primarily by political appointees, an example confirmed by the Department in its comment (2025–0004–29882) on the proposed rule. Consequently, OPM does not accept commenters' characterization of the America First Policy Institute report as discredited. Instead, OPM views many of the examples to be clear cases of career staff engaging in policy resistance and seeking to advance their personally preferred policies over and against those of the democratically-elected President.²⁸⁶

Commenters 30426 and 35543 also object to OPM's citation of the report as argument by anecdote. Commenters believe that these anecdotes are not enough to show policy resistance is a pervasive problem amongst the Federal workforce. Both Commenters, however, miss the point. These examples are case studies used to evaluate the systematic problem of Federal workers inappropriately resisting Presidential policy changes. As discussed above and below, considerable additional evidence of widespread policy resistance exists including an academic study of the EPA during the Reagan administration. This indicates Chapter 75 procedures are inadequate and insufficient to address the problem. Such misconduct is just that—misconduct, meaning it should be easily able to be addressed under current procedures, resulting in relatively minor, if any, presence. Yet, the demonstrated difficulty of using of Chapter 75 renders its procedures inadequate for the task Congress provided.

OPM has previously noted in the proposed rule, and reiterates here, academic analysis of agency performance and career voting registration data show that when career staff are ideologically opposed to agency leadership, there is a lower standard of agency performance, indicating Chapter 75 procedures are insufficient to address the problem.²⁸⁷ This analysis is supported by multiple additional sources. An MSPB survey showed that only two-fifths of agency supervisors are

confident they would be able to remove an employee who engaged in serious misconduct while a plurality thought they could not remove them.²⁸⁸ The lack of belief in these procedures by the practitioners of those who would initiate their use is proof positive that they are insufficient. External commenters, such as Comment 32359, provided additional examples of policy resistance occurring under the current administration. Some Federal employees also commented on the rule and told OPM that policy-resistance “is a real thing” and they “have seen it happen.”²⁸⁹ Agencies, including the Department of Transportation, Department of Education, and HHS, among others, also independently reported in comments to the proposed rule that chapter 75 procedures make it difficult for them to remove employees who engage in policy resistance (or misconduct more broadly). They provided comments of support for this rulemaking based on their belief that the revised regulations would give them the tools necessary to effectively manage their workforces. OPM credits these statements and the agencies' first-hand expertise and experience in the field regarding which they provide comment. In lay terms, if agencies believe Schedule Policy/Career would help improve the management of the Federal workforce, it is strong evidence that it will. The President—the constitutionally responsible official—supports this supposition. He concluded that Schedule Policy/Career is necessary for good administration. OPM credits the President's determination as the judgment of the individual singularly responsible for overseeing the effective operations of the executive branch. OPM would accept the President's determination even if it had not independently come to the same conclusion.

OPM also explained in the proposed rule that statistically representative polling in 2025 shows that a plurality of senior Federal employees in the Washington, DC area would “do what [they] thought was best,” rather than follow lawful orders from President Trump that they thought were bad policy.²⁹⁰ Commenters 4772, 8209, 16846, 32573, 35546, and many others, critiqued OPM's use of this poll. Some

Commenters criticized the survey as politically biased in favor of Republicans. Others also criticized the quality of the polling data, survey questions, and conclusions drawn from the results of the poll. OPM respectfully disagrees with these criticisms. The poll provides information about the respondents, dates of the poll, sample size, method of the survey, polling firm, and weighting based on respondents' choices for President in the previous election. Moreover, the conclusion of the poll is supported by the polling data: 46% of Federal managers, as defined by the poll, would do what they thought best when given a lawful order by President Trump. Only 45% would follow the directive. OPM finds that a plurality of highly paid Federal employees in the Washington, DC metro area reporting they would defy a Presidential directive they believed was lawful but disagreed with on policy grounds highly disturbing and indicative of serious problems within the Federal workforce. And despite criticisms of the polling firm responsible for conducting the survey, Commenters present no evidence that any such political bias impacted the results.²⁹¹

Commenter 32573 argued that better polling data exists, suggesting that a Washington Post-Ipsos poll conducted from February 28 to March 10, 2025, is a better indicator of Federal employee attitudes. Commenter specifically cites data that 95% of Federal employees feel pride in their work and that their agencies effectively use funds. OPM respectfully rejects the notion that this poll including these two data points refutes the poll cited in the proposed rule. An employee's intrinsic feeling of pride is not incompatible with political bias and resistance to the President's policy agenda. Nor is an employee's view on their agency's proper execution of taxpayer funds directly relevant to the question of policy resistance. What is more troubling about the Washington Post-Ipsos poll is that one-quarter of Federal employees believe agencies waste taxpayers' money.

Relatedly, Commenter 27647 criticized the proposed rule's

²⁸⁶ OPM reiterates that this rulemaking is not primarily motivated by the America First Policy Institute study, but OPM does believe this report provides informative case-studies documenting policy resistance that unfortunately does occur within the Federal Government.

²⁸⁷ Jörg L. Spenkuch, Edoardo Teso & Guo Xu, *Ideology and Performance in Public Organizations*, 91 *Econometrica* 1171, 1198–1200 (July 2023), <https://doi.org/10.3982/ecta20355>.

²⁸⁸ See Remedying Unacceptable Employee Performance, at 6.

²⁸⁹ See, e.g., Comment 23567.

²⁹⁰ *Federal Managers Are Evenly Divided As To Whether They Would Follow A Legal Order From President Trump*, Napolitan News Serv. (Jan. 21, 2025), <https://napolitannews.org/posts/federal-managers-are-evenly-divided-as-to-whether-they-would-follow-a-legal-order-from-president-trump>.

²⁹¹ OPM notes that the firm responsible for this polling came within three percentage points of the actual margin of victory in the popular vote in the 2024 Presidential election, projecting Vice President Harris would win the popular vote by 1 percentage point instead of President Trump's 1.5 percentage point margin of victory. OPM takes this as evidence the polling firm produces reliable results and is not biased in favor of conservative positions. See Napolitan News Service, *Poll: Harris 50% Trump 49%* (Oct. 18, 2024), at <https://napolitannews.org/posts/national-poll-harris-50-trump-49>.

characterization of comments submitted during the April 2024 rulemaking claiming that career Federal employees resisted the previous Trump Administration. Because OPM cited only two of these comments, according to the Commenter OPM either grossly exaggerated the extent of the comments or failed to properly document multiple comments. While the Commenter is correct that the proposed rule only cites two sources, the extent to which those sources document policy resistance by career employees sufficiently lays the foundation for this final rule.

In short, OPM has drawn on many sources to conclude that policy resistance is a significant problem in the Federal workforce, and chapter 75 procedures have proven ineffective in addressing the problem. This creates deleterious effects and measures to address these challenges are not pretextual for creating ideological litmus tests, as Commenters suggest.

C. Schedule Policy/Career Is Lawful

i. Administrative Procedure Act and PPPs

OPM received several comments that the proposed rule violated the Administrative Procedure Act (APA). Commenter 35379 argued that the comment period following the proposed rule, which extended to June 7, 2025, was unlawfully short, in violation of the APA. The Commenter based this argument on multiple sources—first, the APA’s mandate that an “opportunity to participate” on proposed rules be provided following a notice of proposed rulemaking; second, E.O.s 12866 and 13563, which specify that comment periods should “generally” be at least 60 days; and, third, the Supreme Court’s holding in *Perez v. Mortgage Bankers Association*, 575 U.S. 92 (2015), and related caselaw, which generally stipulate that the same procedures be used to amend a rule as were used to enact that rule.

Respectfully, OPM rejects the argument that the comment period was inadequate as a matter of law or policy. As multiple appellate courts have held, a 30-day comment period is generally the minimum needed to comply with the APA.²⁹² In *Chamber of Commerce of*

United States v. U.S. Securities and Exchange Commission, the Fifth Circuit upheld an identical 45-day comment period against the charge that it was legally insufficient.²⁹³ It simply is not the case that the APA requires longer than 45 days to comment.

The Commenter’s reliance on E.O.s 12866 and 13563 is similarly misplaced. E.O. 14171, which prompted the current rulemaking, directs OPM to “promptly” amend its regulations to undo the April 9, 2024, rulemaking insofar as necessary to implement E.O. 13957. Implicit in President Trump’s directive to act “promptly” is that the rulemaking process, including the comment period, not be needlessly long. In its proposed rule, OPM decided that a 30-day comment period would be adequate. However, at the request of Commenter 0687 and others, the comment period was extended for an additional fifteen days.²⁹⁴

E.O.s 12866 and 13563 only mandate that comment periods should “generally” be at least 60 days. The policy rationale for that mandate is that stakeholders should have adequate opportunity to meaningfully participate in the notice-and-comment process. Concerning the present rulemaking, OPM received over thirty-five thousand distinct comments, offering nuanced perspectives on virtually every aspect of the proposed rule. Factually, it cannot be said that the comment period was insufficient to allow for meaningful feedback on the proposed rule given the voluminous feedback that OPM did receive.²⁹⁵

Further, in the years since those executive orders were issued, comment periods have not infrequently been shorter, often 30 or 45 days. This is, in part, because agencies, working with the

Inc. v. Madigan, 958 F.2d 1479, 1484 (9th Cir. 1992) (“Although the APA mandates no minimum comment period, some window of time, usually thirty days or more, is . . . allowed for interested parties to comment.”); *Nat’l Lifeline Ass’n v. Fed. Commc’ns Comm’n*, 921 F.3d 1102, 1117 (D.C. Cir. 2019) (“When substantial rule changes are proposed, a 30-day comment period is generally the shortest time period sufficient for interested persons to meaningfully review a proposed rule and provide informed comment.”).

²⁹³ 85 F.4th at 779–80.

²⁹⁴ OPM notes that the proposed rule was released for public inspection on April 18, 2025, but was not formally published in the **Federal Register** until April 23, 2025. So, the effective comment period from public inspection to the close of the comment period was 50 days, not 45 days.

²⁹⁵ OPM additionally notes that the present rulemaking largely repeals policies implemented in the 2024 rulemaking and implements an executive order initially promulgated in 2020. The relevant policies and concepts are not new, as the volume of comments indicates. Consequently, OPM does not believe shortening the effective comment period by 10 days meaningfully impairs the public’s ability to comment on the proposed rule.

White House, have a great deal of discretion in shortening the comment period based on the facts of the situation. As courts have repeatedly held, “executive orders are not judicially enforceable.”²⁹⁶ That is, as a general matter, executive orders and other White House guidance on the regulatory process bind executive agencies only as a matter of the internal management of the executive branch. Thus, several Federal courts have specifically held that there is no legal requirement that agencies comply with the requirements specified in E.O.s 12866 and 13563.²⁹⁷

Additionally, Commenter 35379’s citation to *Perez* is also misplaced. That case involved the revocation of a Department of Labor interpretive rule. Interpretive rules, unlike legislative rules, do not have the force of law. They merely advise interested parties of the agency’s interpretation of the laws that the agency does administer, and they therefore are generally exempt from the APA’s notice and comment requirement. The D.C. Circuit had previously held, under a line of its own cases, that in some circumstances the APA’s notice and comment requirements must be complied with for interpretive rules; specifically, where those rules deviate sufficiently from the agency’s previous interpretation. The Supreme Court stepped in to hold that APA notice and comment procedures need not be complied with to eliminate an interpretive rule, precisely because notice and comment procedures need not be followed to enact it. The Court held that the APA sets forth the full extent of judicial authority to review the procedures behind agency action, and no such requirement was found anywhere in the APA. It was thus in this context, to limit judicially imposed requirements on agencies not derived from the APA, that the Supreme Court stated that the same procedural requirements bind both enacting and repealing a rule. As just discussed, the requirement regarding duration of the comment period is generally 30 days. *Perez* did not say, and obviously did not

²⁹⁶ *Sierra Club v. U.S. Dep’t of Energy*, 134 F.4th 568, 573 (D.C. Cir. 2025) (citing *Marin Audubon Soc’y v. Fed. Aviation Admin.*, 121 F.4th 902, 913 (D.C. Cir. 2024)); see also *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1338–39 (4th Cir. 1995) (no private right of action to enforce executive order unless issued pursuant to a statutory mandate or delegation by Congress).

²⁹⁷ *Nat’l Mining Ass’n v. United Steel Workers*, 985 F.3d 1309, 1326–27 (11th Cir. 2021) (holding that E.O. 12866 and E.O. 13563 specifically are not judicially enforceable); *Miller v. Garland*, 674 F.Supp.3d 296, 307 (E.D. Va. 2023), *appeal dismissed*, No. 23–1604, 2024 WL 4973474 (4th Cir. July 30, 2024) (holding that E.O. 12866 is not judicially enforceable).

²⁹² See *Nat’l Ass’n of Indep. Television Producers and Distribs. v. Fed. Commc’ns Comm’n*, 502 F.2d 249, 254 (2d Cir. 1974) (noting that the APA provides a 30-day minimum notice period); see also *United States v. Gould*, 568 F.3d 459, 469 (4th Cir. 2009) (noting the APA provides for a minimum 30-day notice and comment period absent good cause shown); *Chamber of Com. of the U.S. v. U.S. Sec. & Exch. Comm’n*, 85 F.4th 760, 779 (5th Cir. 2023) (“ . . . the APA generally requires only a minimum thirty-day comment period.”); *Riverbend Farms*,

intend to say, that the comment period for a procedure used to repeal a rule must be identical to the comment period used to enact it. Commenter 35379's citation to *FCC v. Prometheus Radio*,²⁹⁸ is equally unavailing. In *Prometheus*, the comment period lasted only 28 days, below the 30-day minimum that, as we have seen, is recognized by multiple Federal appellate courts as the lower limit needed to comply with the APA.

Moreover, Federal appellate courts have already, at least implicitly, rejected this reading of *Perez*. In the Sixth Circuit's opinion in *Chamber of Commerce of the United States v. Securities and Exchange Commission*,²⁹⁹ at issue was the repeal of a rule concerning business advice to institutional investors regarding proxy voting in shareholder meetings. The initial rule, passed under the first Trump Administration, was enacted under a 60-day comment period. Upon taking office, the Biden Administration moved quickly to repeal the rule, providing only a 30-day comment period and receiving less than a tenth of the number of comments as were received for the initial rule; it did this despite numerous complaints that the new comment period was inadequate. The court nonetheless rejected the argument that the comment period was too short.³⁰⁰

Accordingly, the 45-day comment period provided by OPM, which included a 15-day extension from the usual APA-required minimum at commenters' request, was not "truncated" but was instead well within the APA's procedural requirements and the period that should be considered reasonable in light of the President's executive order compelling agency action.

Another challenge to the proposed rule concerns guidance published by OPM to assist agencies in determining which positions should be placed in Schedule Policy/Career. Commenter 30426 argued that OPM violated the APA's notice and comment requirements when it issued the January 2025 Memorandum. Commenter argued this guidance effectively defined the scope of the policy-influencing terms as used in 5 U.S.C. 7511(b)(2), and such a definition required notice and comment rulemaking.

This analysis is wrong on many levels. First, as previously discussed, OPM's guidance contained in the Memorandum does not establish a new

definition of the policy-influencing terms. Respectfully, Commenter 30426 misconstrues the January 2025 Memorandum. It highlights positions that are more likely to be policy-influencing, but this likelihood is not determinative or definitional. The guideposts help agencies focus their analysis; reviewing every Federal position would be extremely burdensome and inefficient when most have no connection to policy. But Commenter 30426 is wrong that agencies must apply these criteria. The language of E.O. 14171 is precatory ("should give particular consideration"), not mandatory (must/shall include) and so is the guidance ("should consider"). The executive order and guidance in the Memorandum provide considerations to help focus agency analysis, not requirements or determinations. But, as the Memorandum noted, OPM may recommend that positions that fall within those guideposts be excluded from Schedule Policy/Career and that positions that fall outside those guideposts may be included. Similarly, agencies are not required to request that positions that meet these criteria go into Schedule Policy/Career. OPM will be making recommendations to the President based on case-by-case analysis of the underlying positions. OPM expects that it will recommend against transferring some positions that agencies have identified that meet the criteria set forth in the memo. The memo expressly does not provide a determinative construction of the policy-influencing terms or the scope of Schedule Policy/Career.³⁰¹ Its guideposts are not definitional, effectively or otherwise.

Second, OPM's January 2025 Memorandum does not constitute final agency action that triggers notice and comment requirements. It gives guidance to agencies about categories of positions they should consider including in recommendations to the President. The underlying action will be taken by the President, based on his own determinations. The January 2025 Memorandum by itself has no legal force. Nothing happens to anyone

unless and until the President acts. The January 2025 Memorandum is guidance about how to formulate internal executive branch recommendations to the President. At most this is a general statement of policy, and such general statements are exempt from APA notice and comment requirements. See 5 U.S.C. 553(b)(A). If the final Presidential action is not subject to APA procedures, it makes no sense to construe the APA to apply to the process of formulating non-binding recommendations to the President concerning that action.

Lastly, suggesting that notice and comment procedures are required to formulate recommendations to the President, and failure to follow such notice and comment can be enforced by judicial review, would raise grave constitutional concerns. Under the Opinion Clause the President may require Department heads to give their opinions on subjects within their jurisdiction. President Trump did exactly that when he requested OPM and agencies' opinions on positions that should be placed in Schedule Policy/Career. Congress has no authority to regulate how Department heads provide such opinions, much less subject their recommendations to notice and comment followed by Article III judicial review. The President's ability to demand Department heads' unvarnished opinions is inherent Article II authority. Construing OPM providing—at the President's direction—guideposts for agencies to consider in the process of formulating recommendations to the President as final agency action subject to APA notice and comment procedures would raise serious constitutional concerns. Commenter 30426 cites no authority for the proposition that APA notice and comment procedures apply to agencies when making recommendations to the President about how he should exercise Presidentially-vested authority, and OPM is aware of none. Construing such non-final non-binding internal executive branch recommendations to the President as final agency action subject to APA procedures and judicial review would seriously tread on Presidential authority. Under *Franklin v. Massachusetts* it would at least take an express congressional statement of intent to intrude on Presidential authority to construe the APA to do so.³⁰² No such express statement exists. So, respect for separation of powers indicates that courts will not construe OPM guideposts about how to focus analysis when making

³⁰¹ Office of Personnel Management Memorandum, "Guidance on Implementing President Trump's Executive Order titled, 'Restoring Accountability To Policy-Influencing Positions Within the Federal Workforce,'" Jan. 27, 2025, p. 4, available at <https://www.opm.gov/policy-data-oversight/latest-memos/guidance-on-implementing-president-trump-s-executive-order-titled-restoring-accountability-to-policy-influencing-positions-within-the-federal-workforce.pdf> ("The position attributes described in section 5(c) [of E.O. 14171] and this memorandum are guideposts; they are not determinative.").

²⁹⁸ See Comment 35379 at 3 (citing 652 F.3d 431, 453 (3d Cir. 2011)).

²⁹⁹ 115 F.4th 740 (6th Cir. 2024).

³⁰⁰ *Id.* at 755–56.

³⁰² 505 U.S. at 800–01.

recommendations to the President as being subject to APA review.

Commenter 30426 also argues that the rule is unlawful because the January 2025 Memorandum supplies criteria that form part of the definition of the policy-influencing terms, and this rule is tied into that memo, but did not go through notice and comment. This is addressed above. The criteria set forth in the Memorandum are non-binding guideposts to help focus analysis on positions the President is more likely to consider policy-influencing. They are expressly not a definition and do not constrain Presidential discretion in either direction.

Nor do the criteria in the January 2025 Memorandum “effectively supplant” the prior definitions because they do not limit Presidential discretion in making section 7511(b)(2)(A) determinations. Those criteria do not bind or limit the President in any way; they are guideposts to consider when making recommendations that the President can reject or accept as he sees fits. OPM has not been given authority to cabin or limit how the President will make section 7511(b)(2) determinations. Notwithstanding commenters’ protests, E.O. 14171 rendered the new 5 CFR 210.102(b)(3) and (b)(4) definitions unenforceable and without effect. Agencies are prohibited from giving effect to these definitions. OPM is simply proposing to bring its regulations into accordance with the governing legal rules.

Commenter 35379 expressed the position that OPM’s implementation of Schedule Policy/Career departs from APA principles in reversing a position expressed in its April 2024 rulemaking *sub silentio*. As discussed below, the Supreme Court has held that when an agency announces a change in policy, a proper justification must at least acknowledge its change of course and present an argument that the agency feels its new policy to be better than the discarded one. In essence, the commenter’s argument is that OPM’s April 2024 rulemaking expressed the position that a future *rulemaking* would be needed to reimplement Schedule F, with any factual or legal conclusions in a future rulemaking inconsistent with those of the April 2024 rulemaking requiring extensive justification to comply with APA requirements.³⁰³ This supposedly contradicts OPM’s current position that, even prior to this rulemaking, “several provisions of the 2024 final rule [are already] inoperative and without effect.”³⁰⁴ However, OPM

certainly is not changing its position *sub silentio*, as both the proposed rule and the present rulemaking discuss the Biden-era executive order and OPM rulemaking and its present change of course at length. Further, the reason for OPM’s current position is well-justified in its notice of proposed rulemaking.

With respect, the commenter misleadingly truncated its quotation to the April 2025 proposed rule. OPM stated that “*Executive Order 14171* rendered several provisions of the 2024 final rule inoperative and without effect.”³⁰⁵ The proposed rule simply recognized the fact that President Trump directly invoked Presidential authority to override changes to part 210 and 302 made through the April 2024 rulemaking which were themselves enacted pursuant to Presidential authority delegated to OPM.³⁰⁶ As U.S. courts have long understood, the President is not an agency for purposes of the Administrative Procedure Act,³⁰⁷ and President Trump did not need to undertake notice and comment procedures to directly invoke Presidential power through executive order. OPM’s position is that it was his direct exercise of presidential authority which rendered inoperative the relevant provisions of the April 2024 final rule. In the alternative, OPM’s position is that the present rulemaking is independently adequate to repeal and replace relevant provisions of the April 2024 rulemaking even if E.O. 14171 had not already done so.³⁰⁸ This appears to have been a common misunderstanding of OPM’s position in the proposed rule.

Commenter 35379 also disagrees with the proposition that “*Executive Order 14171* has changed the underlying legal authorities under which OPM operates.” The Commenter expressed the view that the April 2024 final rule must be valid and *in effect* until repealed by another OPM rulemaking. Another commenter, Commenter 30005, stated that the proposed rule proposes to use Trump’s authority to “*make inoperative the April 2024 final rule.*” Again, OPM’s position is that E.O. 14171 directly overrode several provisions in the April 2024 final rule.³⁰⁹ Commenter 35379’s

argument that agencies must use the same procedures for invoking and invalidating a final rule, citing the authority of *Perez* and 5 U.S.C. 1103(b)(1), which requires notice and comment rulemaking for OPM regulations which bind beyond OPM and its employees, is therefore inapposite.

Commenter 35379 additionally relied on the authority of *Nebraska v. Su* (Su)³¹⁰ for the proposition that an agency cannot be exempted from notice-and-comment rulemaking on the grounds that the agency was merely implementing an executive order. In *Su*, however, the Ninth Circuit was faced with the argument, accepted by the district court below, that notice-and-comment rulemaking was completely insulated from APA review where it was implementing an executive order. OPM is not taking that position here. Further, in *Su*, the Ninth Circuit took issue with the fact that the Department of Labor had completely failed to take account of any regulatory alternatives to its rulemaking. The Department did so because it viewed itself as having no discretion to take any course of action other than to directly implement the Biden executive order at issue, rendering consideration of alternatives unnecessary and beside the point. The agency’s position in *Su* was that it did not need to comply with the minimum requirements for defending the agency’s position in notice and comment rulemaking because of the executive order issued. In contrast, here, OPM has considered regulatory alternatives, notably including the alternative of not issuing regulations to create Schedule Policy/Career and to instead enhance training on how to use chapter 43 and 75 procedures more effectively.³¹¹ In the proposed rule, OPM discussed both the inadequacy of training procedures as a substitute for issuing Schedule Policy/Career and the risk of confusion created where, as here, (a) the President has a direct right of action under delegated congressional authority without action by an Executive Agency, and (b) the President has exercised that authority in a way which would render OPM regulations misleading without conforming regulatory changes.

Su is also distinguishable insofar as the court found that President Biden’s relevant executive order had exceeded the authority granted to him by the Federal Property and Administrative

³⁰⁵ *Id.* (emphasis added).

³⁰⁶ 90 FR at 17187–88.

³⁰⁷ See, e.g., *Motions Sys. Corp. v. Bush*, 437 F.3d 1356, 1359 (Fed. Cir. 2006) (acknowledging that review of direct presidential action is unavailable under the Administrative Procedure Act).

³⁰⁸ OPM would independently remove 5 CFR 210.102(b)(3) and (4) and subpart F of part 302 on policy grounds, even if E.O. 14171 had not already rendered them legally inoperative and without effect.

³⁰⁹ See 90 FR 8626 (directing OPM to rescind regulations that “impede the purposes of or would otherwise affect the implementation of [E.O.]

³⁰³ See Comment 35379 (citing 89 FR at 24999).

³⁰⁴ 90 FR at 17218.

13957,” and holding 5 CFR 210.102(b)(3) and (4) and subpart F of part 302 inoperative until such rescissions).

³¹⁰ 121 F.4th 1 (9th Cir. 2024).

³¹¹ 90 FR at 17218–17219.

Services Act of 1949, *inter alia*, because it relied on the statute's statement of purpose for the substantive delegation from Congress to the President.³¹² As discussed immediately below, the President's statutory and constitutional authority to manage the executive branch is explicit, not merely implied by non-substantive statutory language. Further, as discussed above in response to other commenters' APA concerns, OPM's present course of action is fully justified in accordance with APA principles even without relying on President Trump's exercise of Presidential authority.

While OPM's April 2025 proposed rule details its justification and authority for issuing the present regulations, 5 U.S.C. 3301 and 3302 delegate to the President direct authority to prescribe rules for the management of the civil service. Presidents have long exercised authority under the CSRA and predecessor statutes to define the boundaries between the competitive and executive services directly through executive order.³¹³ Much of this authority has been delegated to OPM (or, in earlier delegations, to its predecessor agency, the CSC).³¹⁴ However, where the President directly exercises authority delegated to him by statute, this exercise cannot be overridden by an agency regulation issued under Presidential authority subdelegated to that agency.³¹⁵ Aside from basic logic, this result is compelled in the present case by at least three general principles of legal interpretation. First, when two legal authorities conflict (here, E.O. 14171's direct invocation of presidential authority and prior delegations of the same authority to OPM), the later authority should control the earlier.³¹⁶ Second, when a more specific legal authority (here, the substantive provisions of E.O. 14171 with direct legal effect) is in tension with a more

general legal authority (here, broad, comparatively nonspecific delegations of Presidential authority to OPM), the specific controls the general.³¹⁷ And, third, where a higher legal authority (here, executive order) conflicts with a lower legal authority (a regulation issued under authority delegated by executive order), the higher authority must control.

It is the inconsistency between E.O. 14171 and the 2024 final rule which invalidated several provisions of that rule and changed the effective scope of OPM's legal authority. Commenter 30005 asked whether there would be a subsequent OPM regulation to fully rescind the April 2024 final rule, expressing concern that an executive order cannot override an agency regulation. This final rule repeals the April 2024 rule as discussed herein.

Simply put, this line of commenters misconstrues the basic factual and legal situation prior to E.O. 14171 and the current rulemaking. Here, the Biden Administration candidly attempted to block the longstanding Presidential practice of directly exercising executive branch personnel management power through constitutionally and statutorily vested authority. The Biden Administration did this by, first, invoking a delegation of statutory power³¹⁸ from the President to OPM, and then, second having OPM exercise that power so as to serve as a roadblock against an ideologically misaligned future President from invoking that authority directly in the future.³¹⁹ It did this in a domain where, as Justice Jackson explained in one of the Supreme Court's most highly cited passages, Presidential authority is at its constitutional peak.³²⁰ Again, OPM rejects the highly dubious claim that it holds such power over the Presidency, and that such OPM regulations using delegated Presidential authority can

restrict the President's direct exercise of his authority.

Further, this line of commentary fails to account for the fact that OPM has justified the present rule based on a standard APA regulatory analysis. As discussed throughout the rule, OPM did not rely solely on E.O. 14171 to justify the present rulemaking. OPM has exercised independent judgment that the present rule is both necessary and conducive to good government.³²¹ Thus, even if OPM had such vast authority over the President, the present rulemaking is sufficient to independently render inoperative the April 2024 rulemaking.

ii. Schedule Policy/Career Does Not Raise Due Process Concerns

In the April 2024 final rule, OPM stated that tenured Federal employees are constitutionally entitled to due process before any dismissals and any new policies affecting them must still provide constitutional due process.³²² Under this view, E.O. 13957 was unlawful because it permitted agencies to remove currently tenured employees without due process. Many commenters echoed this concern.

As discussed in the proposed rule, OPM has reconsidered its prior view and concludes in this final rule that Schedule Policy/Career satisfies constitutional due process requirements.³²³ For-cause removal restrictions may create a property interest in continued employment. Some caselaw suggests tenured employees may also have a property interest in their tenured status as such.³²⁴ However, this caselaw does not address whether Congress can give Officers of the United States subject to the Appointments Clause a property interest in their office or in tenure status for such office. Numerous judicial decisions hold that officers have no property right to hold office. *See, e.g., Crenshaw v. United States*, 134 U.S. 99 (1890) (An officer has "no [] interest or right" to hold office). *See also Taylor v. Beckham*, 178 U.S. 548 (1900) ("the nature of the relation of a public officer

³¹² 121 F.4th at 7–8.

³¹³ *See, e.g., E.O. 10577*, 19 FR 7521; Kagan, *Presidential Administration*, at 2292.

³¹⁴ *See, e.g., E.O. 12107*, 44 FR 1055 (Dec. 28, 1978).

³¹⁵ At the least, OPM declines to take the constitutionally dubious position that it has the power to restrain future Presidential authority through this rulemaking or the April 2024 rulemaking. Further, to the extent the exercise of authority is fully discretionary on the President's part, "judicial review of the President's decision is not available." *Dalton v. Specter*, 511 U.S. 462, 477 (1994).

³¹⁶ *See Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 984 F.3d 30, 37 (2d Cir. 2020) ("The 'established rule' is that 'a later adopted provision takes precedence over an earlier, conflicting provision of equal stature.'" (quoting *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 518–19 (2019)).

³¹⁷ *See Kaweah Delta Health Care Dist. v. Becerra*, 123 F.4th 939, 951 (9th Cir. 2024).

³¹⁸ OPM notes that while the April 2024 rule cites to statutory authorization under the CSRA for legal support, the President is not so limited in his authority to act. Consistent with this final rule, OPM recognizes that the inherent authority vested in the President under Article II grants him the authority to supervise the executive branch including acting as he did here in issuing E.O. 14171.

³¹⁹ *See* 89 FR 24999.

³²⁰ *Youngstown Sheet*, 343 U.S. at 635–36 (Concurring Op. of Justice Jackson) ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth), to personify the federal sovereignty.").

³²¹ *See, e.g., 90 FR 17198* fn. 199 ("OPM would independently propose changing the final rule to advance the policies described in this proposed rule, even if E.O. 14171 had not been issued and modified the Civil Service Rules."), 17218, 17189, 17191.

³²² 88 FR 63866–63867.

³²³ 90 FR 17210.

³²⁴ *See, e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428–431 (1982) ("a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause"). *See also Savage v. City of Pontiac*, 743 F.Supp.2d 678, 688 (E.D. Mich. 2010) ("The protected property right was the interest in the tenured nature of the employment itself.").

to the public is inconsistent with either a property or a contract right”).

Further, the Supreme Court has also made it clear that government can constitutionally “eliminate its statutorily created causes of action altogether” as “the legislative determination provides all the process that is due.”³²⁵ Removing adverse action appeals extinguishes the underlying property interest they create. OPM explained that Federal courts have, following these constitutional principles, repeatedly rejected challenges to laws excluding positions from state civil service systems and held that due process is satisfied by the applicable governmental body going through the necessary procedures to modify the scope of the civil service.³²⁶ Employees are not entitled to an individual adjudication before the government makes a policy decision to exclude them from adverse action procedures, and any subsequent dismissals are not governed by constitutional due process.³²⁷

In the April 2024 final rule OPM distinguished these cases on the basis that they involved state legislation, not administrative action.³²⁸ Some commenters, including Commenter 32647, on this rulemaking reiterated those objections. For example, Commenter 30426 argues that “an executive action does not necessarily entail the sort of legislative process that could satisfy due process requirements.” In the proposed rule, OPM explained these objections take too narrow a view of the term “legislative” as it is used in due process case law. It is settled precedent that individualized due process is not required when the government makes general policy (“legislative actions”). The distinction between whether “legislative” or “adjudicative” due process applies depends on the character of the action—not which branch of government formally undertakes it.³²⁹

Courts follow a three-part test for determining whether a governmental action is legislative or adjudicative for due process purposes: (1) does it apply to specific individuals or to unnamed and unspecified persons; (2) does the promulgating agency consider general facts or adjudicate a particular set of disputed facts; and (3) does the action determine policy issues or resolve specific disputes between particular parties?³³⁰ Whether the action is formally designated legislative, adjudicatory, or administrative is irrelevant. The proposed rule explained that, under this framework, reclassifications into Schedule Policy/Career are “legislative” actions, not “adjudicative”, for purposes of constitutional due process. The future executive order reclassifying positions into Schedule Policy/Career will apply to a large number of positions, without reference to specific employees encumbering those positions. It will consider general facts regarding known position duties rather than adjudicate disputed facts concerning individual conduct. It will also set policy—namely the scope of adverse actions procedures in the executive branch. Consequently, legislative due process applies.

That process is satisfied by the President following statutory requirements to effectuate reclassifications into Schedule Policy/Career and providing general notice of the change by publicizing the executive order. The President is not required to provide tens of thousands of employees individualized hearings to contest his policy determination before reclassifying their positions, especially when such hearings would be futile and would not impact that ultimate policy decision. As the Supreme Court explained in *Bi-Metallic Investment Co. v. State Board of Equalization (Bi-Metallic)* where a rule “applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption.”³³¹ Moreover, even if legislative action were required, Congress unambiguously vested authority in the President to effectuate these reclassifications.

Commenter 30426 takes issue with this analysis. Commenter points to the Supreme Court’s decision in *Londoner*

v. *City and County of Denver* that covers when adjudicative due process (which requires at a minimum notice and an opportunity to be heard) applies.³³² Commenter explains that cases implicating due process are evaluated on a spectrum between *Londoner* and *Bi-Metallic*, with courts looking for factors that make them more like one or the other. Commenter raises several arguments that reclassifications into Schedule Policy/Career are more like adjudicative actions governed by *Londoner* and individualized due process than legislative actions governed by *Bi-Metallic*. OPM responds to the argument commenter makes below.

Presidential Determinations Under 7511(b)(2) Do Not Require Individualized Determinations

Commenter 30426 argues that “the size of the affected class [is] relevant” to determining whether a government action is legislative or adjudicative. Commenter cites judicial decisions holding that “when a rule adopted for general application applies only to a small number of persons, its characterization as legislation becomes suspect.”³³³ This especially applies “where a small, identifiable group of individuals are singled-out by a legislative act.”³³⁴ Commenter cites several judicial decisions where courts overturned actions removing adverse action procedures for individual employees, or a small numbers of similarly situated employees.³³⁵ Commenter asserts that individual 5 U.S.C. 7511(b)(2) determinations will apply to a only single position description covering a single grade level because the statute authorizes making a determination as to “a position.” However, many position descriptions cover just a single individual or small handful of employees. Commenter concludes that most 7511(b)(2) determinations would affect small numbers of identifiable employees, making these reclassifications more akin to *Londoner*, and consequently individualized due process applies.

Commenter is correct that the size of the affected class is a quite relevant consideration when assessing whether

³²⁵ *Logan*, 455 U.S. at 432–433.

³²⁶ See, e.g., *Gattis v. Gravett*, 806 F.2d 778 (8th Cir. 1986); *Pittman v. Chi. Bd. of Educ.*, 64 F.3d 1098 (7th Cir. 1995); *Rea v. Matteucci*, 121 F.3d 483 (9th Cir. 1997); *McMurtry v. Holladay*, 11 F.3d 499 (5th Cir. 1993).

³²⁷ See, e.g., *Gattis*, 806 F.2d at 781 (citing *Atkins v. Parker*, 472 U.S. 115, 116 (1985)) (“While the legislative alteration or elimination of a previously conferred property interest may be a ‘deprivation,’ the legislative process itself provides citizens with all of the ‘process’ they are ‘due.’”); *Rea*, 121 F.3d at 485, (quoting *Bi-Metallic*, 239 U.S. at 445) (“Individuals affected by generally applicable laws are accorded access to the legislative process ‘by their power, immediate or remote, over those who make the rule.’”).

³²⁸ 89 FR at 25012–13.

³²⁹ *Halverson v. Skagit Cnty.*, 42 F.3d 1257, 1260–1261 (9th Cir. 1994). (“In seeking to define when

a particular governmental action is ‘legislative in nature’ [courts] have eschewed the ‘formalistic distinctions between ‘legislative’ and ‘adjudicatory’ or ‘administrative’ government actions’ and instead focused on the ‘character of the action, rather than its label.’” (quoting *Harris v. County of Riverside*, 904 F.2d 497, 501 (9th Cir. 1990)).

³³⁰ *Gallo v. U.S. Dist. Court for Dist. of Ariz.*, 349 F.3d 1169, 1181–1183 (9th Cir. 2003).

³³¹ 239 U.S. at 445.

³³² 210 U.S. 373 (1908).

³³³ *Richardson v. Town of Eastover*, 922 F.2d 1152, 1158 (4th Cir. 1991).

³³⁴ *Marino v. New York*, 629 F.Supp. 912, 919 (E.D.N.Y. 1986).

³³⁵ See, e.g., *Darling v. Kan. Water Office*, 774 P.2d 941, 942 (Kan. 1989) (Kansas legislation removed tenure for 17 identifiable employees in a single state office); *Perry v. City of New Orleans*, 104 So.3d 453, 457 (La. App. 4 Cir. 2012) (a single employee unilaterally reclassified from classified to unclassified status).

legislative or adjudicative due process applies. Individualized adjudicative due process generally applies to actions covering a small number of individuals, or a single individual, while legislative due process generally applies to actions that affect a large number of differently situated individuals. However, Commenter is mistaken to argue that 7511(b)(2) determinations must be issued separately for individual position descriptions. Nothing in the CSRA requires this, and this assertion is contrary to both long established practice and judicial caselaw governing Presidential determinations under the CSRA. The President can, if he so chooses, make a single 7511(b)(2) determination covering thousands of positions and employees. Such a determination would be a policy of general applicability that does not implicate individualized due process. Reviewing the cases Commenter cites reinforces OPM's conclusion that legislative due process applies to such an action.

Commenter reads far too much into 7511(b)(2) reference to "a position." Section 7511(b) excludes subchapter II's application to "an employee" who meets various criteria, and "an employee" generally only occupies a single position at a time. It would make little sense to use the plural "positions" to describe the characteristics of a single employee. "An employee whose positions are determined . . ." would be nonsensical. Congress' use of correct grammar implies little about how the President issues 7511(b)(2) determinations.³³⁶

Moreover, historical practice refutes the claim a 7511(b)(2) determination must be made only with respect to a single position description and grade level. The first direct Presidential use of this authority occurred not long after the CSRA took effect and declared multiple distinct positions in the Department of Agriculture policy-influencing. These were "Agricultural Stabilization and Conservation Service State Executive Directors, and positions in the Farmers Home Administration the incumbents of which serve as State Directors or State Directors-at-Large."³³⁷ President Clinton subsequently modified this determination to provide that "positions the incumbents of which serve as State

Executive Directors of the Consolidated Farm Service Agency and positions the incumbents of which serve as State Directors or State Directors-at-Large for Rural Economic and Community Development shall be listed in Schedule C for all grades of the General Schedule."³³⁸ President Clinton's determination covered multiple positions and applied to all General Schedule grades. Nothing in the CSRA's text requires limiting 7511(b)(2) exemptions to a single position description covering a single grade. The President can issue a single determination covering multiple distinct positions of different grades; this has been the historical practice.

Historical practice and judicial precedent regarding other Presidential determinations under the CSRA confirms this reading. Section 7103(b)(1) of Title 5, U.S. Code, which was part of the CSRA, allows the President to except "any agency or agency subdivision" from collective bargaining obligations if he determines certain conditions are met. As with 5 U.S.C. 7511(b)(2) the phrasing is in the singular, "agency" and not "agencies." Nonetheless the first executive order making such a determination covered 45 agencies or agency subdivisions.³³⁹ President Carter did not issue 45 separate executive orders making separate determinations for each agency or agency subdivision. Subsequent executive orders making 5 U.S.C. 7103(b)(1) determinations followed this practice and exempted multiple agency components in a single determination.³⁴⁰ Some unions sued over these orders, contending they were procedurally defective because they did not list the ground(s) for the Presidential determination. The D.C. Circuit Court of Appeals rejected these claims, holding "Section 7103(b)(1) makes clear that the President may exclude an agency from the Act's coverage whenever he 'determines' that the conditions statutorily specified exist. That section does not expressly call upon the President to insert written findings into an exempting order, or indeed to utilize any particular format for such an order. The District Court, by mandating a presidential demonstration of compliance with the section, engrafted just such a demand onto the statute."³⁴¹ Section 7511(b)(2) likewise does not require the President to utilize any

particular format for making policy-influencing determinations.

In sum, OPM sees nothing in the text or historical practice of section 7511(b)(2) to indicate the President must limit policy-influencing determinations to a single position and grade level. Caselaw from other CSRA provisions that authorize Presidential determinations indicates that no particular format is required. OPM believes Commenter 30426 is mistaken and that Presidential policy-influencing determinations following finalization of this rule will likely encompass hundreds or thousands of positions across dozens of agencies.

The caselaw Commenter 30426 references reinforces OPM's conclusion that such a mass reclassification of thousands of disparately situated employees across many agencies is a policy of general applicability that is governed by the requirements of legislative due process, namely following the appropriate official procedures and providing public notice of the change.³⁴² Commenter cites to a number of cases where courts overturned on due process grounds actions removing adverse action procedures from state or local government employees. OPM has reviewed these cases. In every case commenters cite the relevant action applied to only a single employee or a small number of similarly situated employees, or the agency did not adequately inform the employee of their change in status. For example, Commenter cites a case where "a Louisiana state court reversed an employee's termination when she was removed summarily from her position after a unilateral status change from classified (protected) to unclassified (unprotected) status."³⁴³ This case involved a single employee whose tenure status was altered, allegedly without prior notice. Commenter similarly cites a judicial decision holding the Kansas Legislature could not legislatively remove civil service protections from 17 employees in a single state office.³⁴⁴ In this case the

³³⁶ Commenter 30426 is correct that OPM's practice has been to limit 7511(b)(2) determinations for Schedule C positions to a single employee. This has been done purely as a policy choice, to facilitate White House control over political appointments across the executive branch. Nothing in the CSRA requires OPM to limit Schedule C determinations in this manner.

³³⁷ E.O. 12300, 46 FR 18683 (Mar. 26, 1981).

³³⁸ E.O. 12940, 59 FR 61519 (Nov. 30, 1994).

³³⁹ E.O. 12171, 44 FR 66565 (Nov. 20, 1979).

³⁴⁰ See, e.g., E.O. 12559, 51 FR 18761 (May 22, 1986).

³⁴¹ *Am. Fed'n of Gov't Emps. v. Reagan*, 870 F.2d 723 (D.C. Cir. 1989).

³⁴² See *United States v. Locke*, 471 U.S. 84 (1985) ("In altering substantive rights through enactment of rules of general applicability, a legislature generally provides constitutionally adequate process simply by enacting the statute, publishing it, and, to the extent the statute regulates private conduct, affording those within the statute's reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements.")

³⁴³ *Perry v. City of New Orleans*, 104 So.3d 453, 457 (La. App. 4 Cir. 2012).

³⁴⁴ *Darling v. Kan. Water Office*, 774 P.2d 941, 942 (Kan. 1989).

legislation applied to a small number of identifiable and similarly situated employees. OPM agrees that adjudicative due process may apply to executive (or legislative) measures that remove adverse action procedures from a single employee or a small number of similarly situated employees, or where employees are not informed of their change in status prior to dismissal. However, this caselaw has little application to a public Presidential 7511(b)(2) determination covering potentially tens of thousands of employees in agencies spanning the Federal Government. Such an action is a rule of general applicability for due process purposes.

Commenter references a number of cases where legislatures enacted mass reclassifications covering many differently situated employees. Courts upheld every such reclassification. For example, the Fifth Circuit Court of Appeals upheld legislation exempting the Mississippi State Department of Economic Development from civil service procedures for one year.³⁴⁵ The Seventh Circuit Court of Appeals upheld legislation ending tenure for all principals in Chicago Public Schools.³⁴⁶ The Eighth Circuit Court of Appeals upheld Arkansas legislation removing all persons holding the rank of major or above in county sheriff offices from the civil service system.³⁴⁷ The Ninth Circuit Court of Appeals upheld Nevada's legislative reclassification of state civil service provisions applicable to hearing officers, which was one of 294 sections in a larger law revising the state's industrial insurance system.³⁴⁸

Commenter does not cite a single case where courts struck down a reclassification that applied to more than a few dozen employees and where those employees were notified of their change in status. Instead, the cases Commenter references show just the opposite. In *Marino v. New York*,³⁴⁹ a Federal judge considered the constitutionality of legislation that broadly modified civil service procedures for employees of New York state courts. The judge rejected due process challenges to exclusions from the civil service, explaining that the "instant case, however, is not the case where a relatively small number of persons were exceptionally affected, in each case upon individual grounds . . . [i]t concerns, instead, a broad policy

affecting hundreds of provisional as well as permanent civil servants and the entire court system serving the citizens of eight judicial districts of the state."³⁵⁰ If a state reclassification affecting hundreds of employees across eight judicial districts affects enough employees to be a policy of general applicability governed by legislative due process, then it follows *a fortiori* that a Federal reclassification of several orders of magnitude more employees (none of whom are personally identified) across dozens of agencies does as well.

In sum, OPM's review of Commenter's arguments and evidence reinforces its conclusion that a Presidential 7511(b)(2) determination covering many disparate positions is a policy of general applicability that is considered a "legislative" action for due process purposes.

Several commenters raised a variety of other due process concerns in response to the proposed rule. OPM addresses the unique issues as follows.

The President Is Not Restricted by Position Descriptions

Comment 30426 argues that 7511(b)(2) determinations must be based on position descriptions, and because those descriptions are often inaccurate or out of date these determinations require adjudicating disputed facts, namely the true duties of the positions in question. Determinations that require adjudicating disputed facts are more akin to *Londoner*-type actions, and the Commenter thus concludes that 7511(b)(2) determinations are "adjudicative" actions governed by individualized due process.

This argument fails for several reasons. First, the CSRA does not require the President to base 7511(b)(2) determinations on the strict text of a position description or any particular factor or set of facts. The decision is left wholly to Presidential discretion. The President may rely on such factors as he deems relevant. In particular, the President may require his agency heads and the OPM director to provide their opinions as to which positions are policy-influencing and appropriate candidates for Schedule Policy/Career, and to use that advice in making a determination. If an agency tells the President that they have employees who are substantively involved in drafting regulations, and those employees' work meaningfully affects agency policymaking, then the President can base a 7511(b)(2) determination on that information. Nothing in the CSRA requires the President to review

individual position descriptions before making a 7511(b)(2) determination, much less hold hearings on the accuracy of those position descriptions.

Consequently, while the President may at his discretion conduct further inquiry after receiving agencies' and OPM's recommendations, and may well do so, the CSRA does not require adjudicating any disputed facts before making a 7511(b)(2) determination.³⁵¹ The President is not required to conduct public hearings to double check his agency heads' analysis.

Second, in the vast majority of cases the factual basis for OPM and agency recommendations will be undisputed and undisputable. Whether a position leads an organizational unit, has been vested with authority to make decisions committed by law to the discretion of the agency head, or is involved in drafting regulations is straightforwardly apparent. These are not facts that require adjudication to ascertain. For example, a Presidential determination that a Field Office or Regional Director belongs in Schedule Policy/Career does not involve adjudication of disputed facts. The duties of the positions are well established.

Third, the administration can in any event ensure position descriptions and employee responsibilities align with the basis of the Schedule Policy/Career recommendation. Position duties are not external facts outside of agency control that must be independently ascertained. They are, instead, administration policy choices about how to allocate work in the executive branch. Agencies can modify them as they see fit. If an employee's actual job entails substantive responsibility for agency policy, but that is not reflected in their position description, the agency can simply update the position description to reflect their actual duties. Conversely, if a position description entails policy responsibilities but particular employees are no longer performing those roles, the administration can simply require those employees to begin performing those tasks. Consequently, the administration can ensure any employees transferred to Schedule Policy/Career have policy-influencing responsibilities. If an employee were to contend their position description inaccurately states they perform substantive policy work, but in fact they do not, the President or Presidential subordinates could functionally tell that employee "be that as it may, these tasks

³⁴⁵ *McMurtry v. Holladay*, 11 F.3d 499 (5th Cir. 1993).

³⁴⁶ *Pittman v. Chi. Bd. of Educ.*, 64 F.3d 1098 (7th Cir. 1995).

³⁴⁷ *Gattis v. Gravett*, 806 F.2d 778 (8th Cir. 1986).

³⁴⁸ *Rea v. Matteucci*, 121 F.3d 483 (9th Cir. 1997).

³⁴⁹ 629 F.Supp. 912 (E.D.N.Y. 1986).

³⁵⁰ *Id.* at 919 (cleaned up).

³⁵¹ OPM notes that it will be undisputed within the executive branch what positions OPM and agencies have recommended—or not—for Schedule Policy/Career.

are now part of your ongoing responsibilities.” The administration can consequently modify the facts under “adjudication” to conform to the President’s policy decision. Under these circumstances it is not clear what the point of a pre-decisional hearing would be.

As a result, OPM concludes that 7511(b)(2) determinations do not require adjudicating a particular set of disputed facts and, thus, are rules of general applicability that constitute legislative action and do not require individualized due process.

7511(b)(2) Determinations Are Not Adjudicative Actions Requiring Individualized Due Process Subject to Judicial Review

Comment 30426 argues that 7511(b)(2) determinations are adjudicative actions because OPM’s discretion is strictly limited to applying an established statutory standard to the facts in a given case. Commenter contends that “Congress gave the President and OPM no discretion at all to make a policy choice in connection with the section 7511(b)(2) determination. Section 7511(b)(2) authorizes only the ascertainment of facts and the application of an established legal standard to them.” Commenter further argues these determinations are subject to judicial review because “section 7511(b)(2)(A) establishes a legal standard that a hearing officer or court could apply to OPM’s determination regarding a position . . . [whether] the position [is] of a ‘confidential, policy-determining, policy-making or policy-advocating’ character.” Commenter reasons that actions applying a legal standard to the facts of a given case that a court or administrative body could review are adjudicative actions, not legislative actions, for due process purposes.³⁵²

Commenter is wrong on both counts. The policy-influencing terms provide an intelligible principle governing the Presidential exercise of statutory authority, but they are not a definite legal standard that courts could apply when reviewing a 7511(b)(2) determination—as every appeals court to consider this issue has concluded. Further, the President has broad policy discretion over which positions to

exclude from subchapter II of chapter 75.

On the first point, the terms “confidential,” “policy-determining,” “policy-making,” and “policy-advocating” are indefinite and subjective. They require a nexus to confidential duties, or determining, making, or advocating for policy, and thus provide an intelligible principle to guide Presidential decisions. But they do not define how much responsibility or what level of duties are necessary to meet this standard.

The fact that the policy-influencing terms were indefinite and left considerable executive branch discretion as a standard was known when Congress passed the CSRA. As OPM explained in the proposed rule, as early as the 1950s the Second Hoover Commission objected that the term “policy-determining” did not provide clear guidance: “[t]he term ‘policy-determining’ has continued to be employed without much refinement This criterion is all right as far as it goes, but it is so great an oversimplification that it does not give adequate guidance [w]hen the departments began to apply [the Schedule C criteria] in 1938, some decided that only the secretary and assistant secretaries determined policy. Others avowed that minor officials at the sub-bureau level were policy determiners. In departmental recommendations in 1953 and 1954 regarding schedule C, there has been an even greater diversity No decision was made as to where the lines between the political high command and the permanent civil service of the Government should be drawn.”³⁵³ Nonetheless, Congress used this indefinite language in drafting section 7511(b)(2).

Commenter asserts that 7511(b)(2) is an established legal standard that courts or administrative bodies could apply in reviewing 7511(b)(2) determinations, but does not attempt to describe that standard or explain how courts would decide when a position is policy-influencing enough to justify Presidential inclusion or exclusion. The mere assertion that 7511(b)(2) is an established judicially reviewable standard does not make it so. Notably, every appeals court that has examined this question has concluded 7511(b)(2) determinations are “inherently

discretionary judgement call[s]” not conducive to judicial review.³⁵⁴

On the second point, Commenter’s contention that Congress gave the President “no discretion at all to make a policy choice in connection with the section 7511(b)(2) determination” fails for the same reason. Exclusion from subchapter II under section 7511(b)(2)(A) requires two elements: that the President directly place a particular position in the excepted service, and the President determine the position is policy-influencing. Both elements are discretionary policy choices.

Direct Presidential exception from the competitive service under 5 U.S.C. 3302 is straightforwardly a discretionary policy call. The President is not required to directly except any positions from the competitive service, and since the CSRA became law has only done so for a few positions.³⁵⁵ The ordinary practice is for OPM to make such exceptions. And, as discussed above, 7511(b)(2) policy-influencing determinations are also an “inherently discretionary judgement call” committed to the President’s discretion.³⁵⁶ Nothing in the CSRA requires the President to exclude every position he believes is policy-influencing from subchapter II. So, contrary to commenter’s assertion, a Presidential decision to exclude positions from adverse action appeals is a discretionary policy judgement about the appropriate scope of adverse action appeals in the executive branch, not a route application of the law to facts.

OPM does agree with Commenter’s point that “[c]ourts have held that ‘The absence of definite standards is more characteristic of purely political or legislative activity than of adjudication,’”³⁵⁷ and that judicial analysis of due process requirements “have turned partly on the lack of criteria against which courts could

³⁵⁴ See *Stanley v. Dep’t of Justice*, 423 F.3d 1271, 1272 (Fed. Cir. 2005) (“Here, it is undisputed that Attorney General Reno’s Order in 1996 determined that the position of Trustee was of a ‘confidential, policy-determining, policy-making or policy-advocating character.’ This designation of the Trustee position is unreviewable by the courts because it is an ‘inherently discretionary judgment call’ committed to the Attorney General.”); see also *Stanley v. Gonzales*, 476 F.3d 653, 658 (9th Cir. 2007) (“We also agree with the Federal Circuit that the decision to classify a given position as confidential or policy-making is not reviewable in federal court as a violation of the separation of powers doctrine.”).

³⁵⁵ See 5 CFR 6.8.

³⁵⁶ See *Stanley v. Dep’t of Justice*, 423 F.3d at 1272; see also *Stanley v. Gonzales*, 476 F.3d at 658.

³⁵⁷ *Mercatus Grp., LLC v. Lake Forest Hosp.*, 641 F.3d 834, 846 (7th Cir. 2011).

³⁵² OPM notes that if Commenter’s argument that the policy-influencing terms are a term of art that exclusively means “political appointee” is correct, this argument fails completely, as there would be no standards to evaluate. The policy-influencing terms would simply mean “the Presidents wants this to be a political appointment” with nothing to cabin Presidential discretion.

³⁵³ Citing Comm’n on the Org. of the Exec. Branch of the Gov’t, Task Force on Pers. and Civil Serv., Report on Personnel and Civil Service, at 6–7, 35 (Feb. 1955), https://www.google.com/books/edition/Report_on_Personnel_and_Civil_Service/yIR9zYFWvtwC.

evaluate pure policy questions.”³⁵⁸ In this case the absence of definite standards that courts or adjudicators could apply to, and the discretionary nature of, 7511(b)(2) determinations is characteristic of policies of general applicability, not adjudication, and legislative due process consequently applies.

Individualized Due Process Will Not Be Provided to Affected Employees

Comment 30426 argues that it would not be burdensome to the administration for OPM to provide individualized due process to employees affected by 7511(b)(2) determinations by providing notice and holding hearings before a neutral hearing officer.

Commenter does not appear to grasp that the President—not OPM—will be making these determinations. Neither OPM nor any hearing officers will have authority over these Presidential determinations, so hearings before subordinate officers would at most produce non-binding recommendations to the President. OPM considers it self-evident that requiring the President to personally conduct individualized hearings before making 7511(b)(2) determinations would be highly burdensome and detract from his ability to perform his constitutional functions.

RIFs and Individualized Due Process

Commenter 30426 argues that OPM was wrong to state in the proposed rule that agency reductions in force (RIFs) raise no constitutional concerns because they implicate legislative due process. Rather, commenter argues these judicial decisions have upheld RIFs on other grounds.

Commenter is correct that courts have not specifically upheld RIFs on the grounds they are governed by legislative due process. OPM appreciates the clarification of its analysis. However, the reasoning underlying judicial holdings that individualized due process is not required for RIFs indicates that it is not required for Presidential exclusions from subchapter II's coverage either.

As Commenter notes, “[c]ourts have also focused on the fact that ‘a pre-termination hearing would be a futile exercise’ in the context of RIFs where there were no facts to adjudicate, as the employees’ conduct was not at issue, and no legal criteria applied to the decision to reduce the staff.”³⁵⁹ Applying these criteria, a pre-

determination 7511(b)(2) hearing would also be a futile exercise. In such a hearing there would be no facts to adjudicate, as previously discussed. Employee conduct would likewise not be at issue and would be wholly irrelevant to the policy-influencing determination. Further, such determinations are also “wholly discretionary judgement call[s]” not susceptible to judicial or administrative review for the reasons previously discussed.

Consequently, pre- or post-decisional hearings over 7511(b)(2) determinations would be pointless. If the President were to determine regulation writers, or employees in an agency policy unit, or leaders of organizational units were policy-making and subject to 7511(b)(2) they have no basis on which to contest that determination. There is no standard available to show that a position’s policy responsibilities are sufficiently large or small to qualify. They would be requesting a hearing over a discretionary Presidential judgment call. There is little likelihood that such a hearing, if provided, would alter the President’s analysis about the appropriate scope of 7511(b)(2) exceptions. Due process does not require providing futile hearings that will have no substantive effect.

7511(b)(2) Determinations Are Legislative Actions That Do Not Require Individualized Due Process

Comment 30426 argues that while legislative action can terminate employees’ property interest in their positions or adverse action procedures, administrative action does not provide sufficient due process to do so. Commenter cites several cases where courts ruled that administrative agencies could not terminate legislatively granted civil service procedures. The executive vs. legislative distinction Commenter draws is constitutionally irrelevant. Case-law does not draw a procedural due process distinction between whether an act is formally undertaken by the executive, legislative, or judicial branches. What matters is the character of the action, not which branch formally undertakes it. For the reasons discussed above, 7511(b)(2) determinations are generally applicable legislative actions that do not require individualized notice and an opportunity to respond. In *United States v. Locke*, the Supreme Court explained the due process requirements necessary to implement generally applicable rules. The Court held that legislative action is intrinsically sufficient in providing constitutionally adequate process by “enacting the statute, publishing it, and, to the extent the statute regulates private

conduct, affording those within the statute’s reach a reasonable opportunity both to familiarize themselves with the general requirements imposed and to comply with those requirements.”³⁶⁰ Presidential executive orders fulfill these requirements just as much as congressional or state legislation. None of the cases Commenter cites involved situations where the legislative branch authorized the executive branch to exclude positions from civil service procedures and the executive branch publicly followed the relevant procedures. They instead all involve the executive branch exceeding its authority or ignoring the relevant legislative rules.³⁶¹ OPM does not see these cases as standing for the proposition that a procedurally regular executive determination issued pursuant to a legislative grant of authority would be constitutionally insufficient.

This Final Rule Does Not Violate the Supreme Court’s Holding in *Arnett*

Several commenters raised related arguments that the rulemaking violated Supreme Court precedents pertaining to Federal employees’ due process protections. Commenters 0638, 2390, 13440, 30426, and others argued that Schedule Policy/Career ignores the Supreme Court’s decision in *Arnett v. Kennedy*.³⁶² In *Arnett*, the Supreme Court held that the Lloyd-La Follette Act’s post-termination procedures as used by the agency adequately protected the interests of the Federal employee who had been removed. This contrasted with a pre-termination hearing that the appellant had sought. This case involved an employee who was in the competitive service prior to passage of the CSRA. Schedule Policy/Career will not affect the grant of post-termination hearings to employees facing adverse actions who remain in the competitive service. As previously articulated, Schedule Policy/Career is based on the ability of the President to except employees from the competitive service under 5 U.S.C. 7511(b)(2) because they are performing policy-influencing type work. Once such employees are placed in Schedule Policy/Career, they are not entitled to either a pre- or post-termination hearing for the reasons discussed above.

³⁶⁰ 471 U.S. 84 (1985).

³⁶¹ For example, Commenter cites cases where a university simply disregarded an employee’s tenured status. See *Collins v. Marina-Martinez*, 894 F.2d 474 (1st Cir. 1990). Commenter similarly cited a case where Cook County simply disregarded legislatively granted civil service procedures. See *Carston v. Cnty. of Cook*, 962 F.2d 749, 753 (7th Cir. 1992).

³⁶² 416 U.S. 134 (1974).

³⁵⁸ Comment 30426.

³⁵⁹ Commenter points to, e.g., *Rodriguez-Sanchez v. Municipality of Santa Isabel*, 658 F.3d 125, 130 (1st Cir. 2011), for this proposition.

Loudermill is Inapplicable To Schedule Policy/Career

A number of commenters asserted that the rule ignores the Supreme Court's *Loudermill* decision, *Cleveland Board of Education v. Loudermill*.³⁶³ In *Loudermill*, the Supreme Court held that certain public-sector employees can have a property interest in their employment, per Constitutional Due Process, and that this property interest entails a right to "some kind of hearing" before an employee may be terminated—a right to oral or written notice of charges against them, an explanation of the employer's evidence, and an opportunity to present their side of the issues. The commenters' argument hinges on whether an employee has been granted a statutory or administrative right to a notice or hearing either before or after an adverse action. Under current law, many Federal employees are entitled to a pre-termination notice and opportunity to respond, as well as a subsequent post-termination review and hearing for an adverse action. For positions in the competitive service, such hearings are required. In addition, many positions in the excepted service are also entitled to pre- and post-termination notice/hearings. Nevertheless, the right to a hearing is based the decision of a governmental entity to afford such procedures to its employees, or classes of employees. Schedule Policy/Career positions will not be entitled to a notice/hearing precisely because of legislative action expressed at 5 U.S.C. 7511(b)(2) that exempts positions that are determined to be of a confidential, policy-determining, policy-making or policy-advocating character from these procedures. The statute does not provide for a notice or hearing on the issue of whether a position is of "a confidential, policy-determining, policy-making or policy-advocating character." A Presidential decision on the issue is conclusive. For the reasons discussed above, such Presidential determinations are policies of general applicability that require following only legislative due process, and do not require prior individualized hearings and an opportunity to respond. Once positions are reclassified into this Schedule notice and an opportunity to respond is no longer required. Relatedly, no new congressional action is necessary to affect the provisions of Schedule Policy/Career since the CSRA has already spoken to the issue, and in implementing Schedule Policy/Career

the executive is merely utilizing an existing authority.

The Final Rule Does Not Conflict With Perry

Several commenters expressed the related view that the rule is at odds with *Perry v. Sindermann*.³⁶⁴ OPM respectfully disagree with this view. The rule is not at odds with *Perry v. Sindermann* precisely because the rule provides that there is no expectation of a hearing, whether pre- or post-termination for individuals occupying positions filled under Schedule Policy-Career. In *Perry*, the plaintiff was denied renewal of his contract after 10 years of service teaching in the Texas Community College system. The plaintiff alleged that the non-renewal of his contract was based on his criticisms of Texas public officials. The Supreme Court found that the plaintiff was entitled to a due process hearing. However, this was based on the practices of the college at which he taught. Those practices established a *de facto* tenure program. There is nothing in *Perry* suggesting that the school or the State of Texas college governing body could not have amended or changed their rules to eliminate the "tenure type" protection relied upon by the plaintiff. Unlike the situation in *Perry*, employees whose positions fall under Schedule Policy/Career will be on notice that they have no right to a hearing prior to removal. There is no *de facto* or informal tenure attaching to positions under Schedule Policy/Career.

Commenters 8239 and 27012 assert that the cases relied on in the proposed rule—*Halverson v. Skagit County*³⁶⁵ and *Gallo v. U.S. District Court for the District of Arizona*³⁶⁶—do not support OPM's assertion that the reclassification into Schedule Policy/Career is "legislative" in nature and therefore does not require individual due process. However, both cases support the propositions they were cited for in the proposed rule.³⁶⁷ Furthermore, as discussed above, various other cases support the proposition that reclassifying positions into Schedule Policy/Career is legislative in nature and therefore satisfies due process requirements.

³⁶⁴ 408 U.S. 593 (1972).

³⁶⁵ 42 F.3d 1257 (9th Cir. 1994) (*Halverson*).

³⁶⁶ 349 F.3d 1169 (9th Cir. 2003) (*Gallo*).

³⁶⁷ See 90 FR 17211; *Halverson*, 42 F.3d at 1260–61; *Gallo*, 349 F.3d at 1182.

iii. Construing CSRA To Forbid Schedule Policy/Career Would Create Serious Constitutional Concerns

In the proposed rule, OPM explained that construing the CSRA to prohibit the President from making senior policy-influencing officials at-will would raise serious constitutional concerns. The constitution's Appointments Clause governs the appointment of "Officers of the United States"—officials who exercise significant authority pursuant to Federal law in continuing positions established by law. These officers are divided into two classes; principal officers who exercise final authority for the executive branch and are supervised, in their use of that authority, only by the President, and inferior officers whose actions are supervised by a principal officer. Constitutionally, most Federal officials are neither principal nor inferior officers, but employees without "significant authority" who assist constitutional officers in the performance of their duties.

The Supreme Court explained in *Seila Law LLC v. Consumer Financial Protection Bureau* (*Seila Law*) that Congress has little power to insulate constitutional officers (as opposed to employees) from accountability to the President. Article II of the Constitution vests all Federal executive power in the President. Consequently, the President must have authority to supervise—and if necessary, remove—the officers who wield his delegated authority. "[T]he outermost constitutional limits of permissible congressional restrictions on the President's removal power" is restricting removals of "inferior officers with limited duties and no policymaking or administrative authority."³⁶⁸ As OPM explained in the proposed rule, chapter 75 covers some inferior officers with substantive policymaking or administrative authority. Construing the CSRA to prevent the President from dismissing these officers at-will would contravene Article II's vesting executive power in the President. Construing 7511(b)(2) to allow the President to remove these officers' adverse action procedures eliminates the constitutional difficulty, as the removal protections would exist

³⁶⁸ *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197 (2020). The Court also recognized a second exception for the principal officers who lead multimember independent agencies that do not exercise significant executive power. Such principal officers are not covered by chapter 75 and thus not at issue in this rulemaking. Regardless, the Supreme Court recently heard oral argument in a case that will re-examine the continued validity of this exception for the heads of some independent agencies. See *Trump v. Slaughter*, No. 25A264, No. 25–332, 2025 WL 2692050 (U.S. Sept. 22, 2025).

³⁶³ 470 U.S. 532 (1985).

at the President's sufferance.³⁶⁹ OPM believes that this is the best reading of the CSRA regardless. However, under the doctrine of "constitutional avoidance" courts interpret statutes, if possible, to avoid grave constitutional issues. Even if interpreting 7511(b)(2) to allow the President to remove incumbent officials' adverse action procedures was not the most natural interpretation of the law, it is a permissible one. OPM accordingly concluded the doctrine of constitutional avoidance would require this construction.

Commenter 30426 argues that OPM's reliance on this reasoning is flawed. In this regard, Commenter 30426 asserts that (1) OPM failed to identify any statutorily-established civil service positions determined by the courts to be inferior officers, and more broadly that OPM has only identified two specific positions that are offices covered by subchapter II and Commenter disputes their status as offices; and (2) the Court's decision in *United States v. Arthrex* (2021) establishes that inferior officers with significant power may constitutionally possess removal protections.³⁷⁰ Therefore, Commenter 30426 argues that OPM fails to justify abandoning its prior determination in the 2024 final rule that subchapter II raises no constitutional concerns.³⁷¹

Contrary to Commenter 30426's first argument, OPM has identified examples of positions that are likely inferior officers whose removal protections are unconstitutional if subchapter II binds the President. Commenter 30426 argues that OPM is required to cite specific judicial decisions to justify each position that OPM labels as being occupied by an inferior officer. However, this onerous requirement would lead to the conclusion that almost no inferior officers exist in the Federal Government beyond those explicitly labelled by Federal courts. Such a conclusion does not follow from court precedent and Commenter 30426's "requirement" misrepresents how judicial decisions are implemented.

A judicial decision holds that a specific position is—or is not—a constitutional office. The executive branch then applies the principles established by the courts in reaching these holdings to assess when other positions are likely offices. For example, the U.S. Department of Labor has

applied the principles of *Seila Law*,³⁷² *Arthrex*,³⁷³ and *Lucia v. Securities and Exchange Commission*³⁷⁴ to arguments raised in cases regarding the constitutionality of removal protections for its administrative law judges.³⁷⁵ Similarly, OPM—applying these same principles—found many positions that are likely inferior officers covered by subchapter II, even though these positions are not directly governed by prior cases.³⁷⁶

For example, as OPM noted in the proposed rule, EEOC office directors in the field, including directors of district, area, field, and local offices, are likely inferior officers with unconstitutional removal protections. Such directors are expressly created by law. Title 42 provides that the EEOC "Chairman . . . shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions . . . The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter."³⁷⁷ Pursuant

³⁷² 591 U.S. 197 (2020).

³⁷³ 594 U.S. 1 (2021).

³⁷⁴ 585 U.S. 237 (2018).

³⁷⁵ See *Howard v. Apogee Coal Co.*, BLR, BRB No. 20–0229, slip op. at 3–5 (Oct. 18, 2022).

³⁷⁶ While not relevant to this rulemaking, OPM acknowledges that there also may be inferior officers with removal protections in the Senior Executive Service, such as Regional Directors at the Federal Labor Relations Authority (FLRA RDs), that would raise similar constitutional concerns. FLRA RDs have significant delegated authority under 5 U.S.C. 7105(e)(1), which includes the authority (1) to determine whether a group of employees is an appropriate unit; (2) to conduct investigations and to provide for hearings; (3) to determine whether a question of representation exists and to direct an election; and (4) to supervise or conduct secret ballot elections and certify the results thereof. See 5 U.S.C. 7105(e)(1).

³⁷⁷ 42 U.S.C. 2000e–4(a), (f).

³⁷⁸ Commenter 30426 also argues that EEOC Field Office Directors cannot be constitutional officers because their offices are established by regulation and not specifically established by statute. Commenter's source for this assertion is a concurring opinion signed by a single Supreme Court justice. Respectfully, concurrences represent the views of the justices who issue them, but they are not the law. Caselaw has frequently recognized that offices can be established by regulation if those regulations are themselves authorized by statute. See, e.g., *United States v. Mouat*, 124 U.S. 303, 307–08 (1888). In *United States v. Maurice*, 26 F.Cas. 1211, 1215 (No. 15,747) (C.C.D. Va. 1823) Justice Marshall concluded that, at least for purposes of a suit to enforce a purported officeholder's bond, the office of agent of fortifications had been created by congressionally approved and authorized Army regulations. So positions created by legislatively authorized regulations can be offices and have been consistently held as such since the earliest days of the Republic. Regardless, as discussed above, the relevant statutory provisions directly authorize the EEOC to create regional offices and appoint officers, so Commenter's objection is inapposite.

to this express legislative authorization, the EEOC has by regulation created offices in the field, including district, area, field, and local offices, to assist in its administration and enforcement of the Civil Rights Act, and the EEOC Chair has appointed directors to lead these offices. These positions continue as long as the EEOC regulations remain in effect. Therefore, directors occupy continuing positions established by law.³⁷⁸

Further, as detailed in the proposed rule,³⁷⁹ district, area, field, and local office directors clearly exercise significant authority pursuant to EEOC regulations, including authority to serve notices of charges, make a final determination of reasonable cause, negotiate and sign conciliation agreements, negotiate settlements, withdraw charges, issue no-cause determinations, and issue notices of right to sue.³⁸⁰ District, area, field, and local directors thus exercise significant authority pursuant to law, which is why EEOC regulations have long described them as "officers."³⁸¹

Commenter dismisses this analysis because "OPM identifies no decision in which any court has . . . determine[d] that a particular employee at a middle management level in a remote office was an inferior officer." However, Commenter identifies no case in which courts held an official who wielded the significant authority of an EEOC district, area, field, or local office director was not a constitutional officer either. In the absence of controlling precedents, the executive branch looks to the reasoning underlying Appointments Clause precedents. That reasoning indicates EEOC district, area and local office directors are inferior officers covered by the Appointments Clause because they wield significant administrative authority pursuant to law in continuing positions established by law. Under *Seila Law* these inferior officers cannot constitutionally be insulated from Presidential removal. Accepting Commenter's construction of the CSRA makes applying subchapter II to these officers unconstitutional.

³⁷⁹ 90 FR at 17212.

³⁸⁰ See 5 CFR 1601.10, 1601.14, 1601.18, 1601.19, 1601.20, 1601.21, 1601.24. Field Office Directors do not have unreviewable or final authority to bring charges of violations of the Civil Rights Act. However, unreviewable authority distinguishes principal vs. inferior officers—not between officers and employees. See, e.g., *Freytag v. C.I.R.*, 501 U.S. 868, 881–82 (1991) (finding that special tax judges were officers not employees even though they did not have final decisional authority but issued opinions that did not take effect unless adopted by a higher-ranking official).

³⁸¹ See 29 CFR 1601.5 ("The term 'district director' shall refer to that person designated as the Commission's chief officer in each district.").

³⁶⁹ 90 FR 17182, 17215 (Apr. 23, 2025).

³⁷⁰ 594 U.S. 1 (2021).

³⁷¹ See 89 FR at 25007 ("[T]hese comments are mistaken in their assertion that 'many senior career officials are inferior officers.' OPM is not aware of any judicial decision holding so and the comments cite none.").

OPM is aware of many other positions that are likely offices wielding significant policymaking or administrative authority that are covered by subchapter II. For example, National Labor Relations Board (NLRB) Regional Attorneys (Regional Attorneys) are also likely inferior officers. The office of Regional Attorneys is provided for by statute, including an express requirement they be appointed by the NLRB and giving them direct statutory authority to bring—or decline to bring—civil actions seeking injunctive relief in Federal court for specific violations of the law.³⁸² Statutory authority to seek—or decline to seek—an injunction in Federal court to vindicate public rights is a well-established significant authority of an officer.³⁸³ OPM is aware that NLRB policies currently require Regional Attorneys to obtain approval from the Presidentially-appointed Board before exercising their statutory authority to seek an injunction. But whether their significant authority is subject to higher level review is determinative of whether Regional Attorneys are principal or inferior officers, not whether they are officers at all.³⁸⁴ Statutorily vested responsibility for seeking a Federal court injunction is significant authority for Appointments Clause purposes. Thus, it seems likely that Regional Attorneys—who exercise significant authority pursuant to law in continuing positions provided for by law—are Officers of the United States.

³⁸² See 29 U.S.C. 154 (“The Board shall appoint . . . such attorneys, examiners, and regional directors . . . as it may from time to time find necessary for the proper performance of its duties.”); 29 U.S.C. 160(l) (“Whenever it is charged that any person has engaged in an unfair labor practice . . . preliminary investigation of such charge shall be made . . . If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter.”); 29 CFR 101.37 (“the officer or regional attorney to whom the matter has been referred will make application for appropriate temporary relief or restraining order in the district court of the United States within which the unfair labor practice is alleged to have occurred or within which the party sought to be enjoined resides or transacts business.”).

³⁸³ See *Buckley v. Valeo*, 424 U.S. 1, 141 & n.177 (1976) (finding authority to “bring civil action (including proceedings for injunctions) against any person who has engaged or who may engage in acts or practices which violate” the law is reserved to officers).

³⁸⁴ See, e.g., *Freytag v. C.I.R.*, 501 U.S. at 881–82 (finding that special tax judges were officers even though they did not have final decisional authority but issued opinions that did not take effect unless adopted by a higher-ranking official).

They also exercise considerable administrative authority. Consequently, under *Seila Law* interpreting 7511(b)(2) to prevent the President from holding them accountable would raise grave constitutional concerns.

Additionally, under *Freytag v. Commissioner*³⁸⁵ and *Lucia*,³⁸⁶ officials who perform duties typically assigned to administrative adjudicators are constitutional officers. Scholars have documented that agencies employ over 10,000 non-administrative law judge adjudicators, who are generally employed in either senior General Schedule grades or as Senior Level employees and are covered by subchapter II.³⁸⁷ These adjudicators frequently exercise substantive administrative or policy-making authority through their decisions. Under *Seila Law*, construing the CSRA to insulate these officers from Presidential supervision is unconstitutional.

For example, the MSPB employs dozens of administrative judges to hear adverse action appeals. These administrative judges occupy “continuing positions established by law” under the Appointments Clause.³⁸⁸ Most importantly, these administrative judges exercise significant authority that mirrors the authority highlighted by the Court in *Freytag* and *Lucia*: they “take testimony” by receiving evidence, examine witnesses at hearings, and taking pre-hearing depositions;³⁸⁹ “[c]onduct trials” by administering oaths, ruling on motions, and generally regulate the course of a hearing and the conduct of parties and counsel;³⁹⁰ “rule on the admissibility of evidence;”³⁹¹

³⁸⁵ 501 U.S. at 868, 881–82 (1991).

³⁸⁶ 585 U.S. at 248–49.

³⁸⁷ Kent Barnett & Russell Wheeler, *Non-ALJ Adjudicators in Federal Agencies: Status, Selection, Oversight, and Removal*, 53 Ga. L. Rev., 1, 33–34 (2018) https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2294&context=fac_artchop. OPM discusses non-ALJ adjudicators here because ALJs are not covered by subchapter II of chapter 75.

³⁸⁸ Section 1204(a)(1) of Title 5, U.S. Code, provides for the MSPB to “hear, adjudicate, or provide for the hearing or adjudication of all matters within” MSPB’s jurisdiction. Section 1204(h) of Title 5, U.S. Code, further authorizes the MSPB “to prescribe such regulations as may be necessary for the performance of its functions,” and 5 U.S.C. 1204(j) authorizes the MSPB Chair to “appoint such personnel as may be necessary to perform the functions of the Board.” Pursuant to this statutory authorization, the MSPB promulgated regulations that authorize (1) the designation of administrative employees as “judges” who perform adjudicatory functions, see 5 CFR 1201.4(a), and (2) the appointment of “[j]udges in the regional and field offices [to] hear and decide initial appeals and other assigned cases as provided for in the Board’s regulations,” 5 CFR 1201.10(c).

³⁸⁹ *Freytag*, 501 U.S. at 881; see 5 CFR 1201.41(b).

³⁹⁰ *Freytag*, 501 U.S. at 882; see 5 CFR 1201.41(b).

³⁹¹ *Freytag*, 501 U.S. at 882; see 5 CFR 1201.41(b).

they have “[p]ower to enforce compliance with discovery orders;”³⁹² and they may punish all contemptuous conduct, including violations of those orders “by means as severe as excluding the offender from the hearing.”³⁹³ Therefore, pursuant to *Freytag* and *Lucia*, MSPB administrative judges meet all the criteria for a constitutional officer. The MSPB recognizes this and requires agency-head appointments to AJ positions. Further, MSPB AJs exercise substantial administrative authority because they decide whether to uphold or reverse employee removals, demotions, and long-term suspensions across the executive branch.³⁹⁴ If the CSRA is construed to prevent the President from waiving their adverse action procedures, then under *Seila Law*, *Lucia*, and *Freytag*, chapter 75 cannot be constitutionally applied to MSPB administrative judges. This reasoning likely applies to many more non-AJ administrative adjudicators across the executive branch.

Many additional other Federal positions are likely constitutional offices. OPM is mindful of Justice Breyer’s analysis in *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010). Justice Breyer noted “that the term ‘inferior officer’ is indefinite but [] efforts to define it inevitably conclude that the term’s sweep is unusually broad”³⁹⁵ Justice Breyer observed that the Supreme Court has held the following officials “officers”: (1) a district court clerk;³⁹⁶ (2) “thousands of clerks in the Departments of the Treasury, Interior and the other[r]” departments,³⁹⁷ who are responsible for “the records, books, and papers appertaining to the office,”³⁹⁸ (3) a clerk to “the assistant treasurer” stationed “at Boston;”³⁹⁹ (4) and (5) an “assistant-surgeon” and a “cadet-engineer” appointed by the Secretary of the Navy;⁴⁰⁰ (6) election monitors;⁴⁰¹ (7) United States attorneys;⁴⁰² (8) Federal marshals;⁴⁰³

³⁹² *Freytag*, 501 U.S. at 882; see 5 CFR 1201.41(b).

³⁹³ *Lucia*, 585 U.S. at 248; see 5 CFR 1201.43.

³⁹⁴ 5 U.S.C. 7701(b)(2)(A).

³⁹⁵ *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 539 (2010) (Breyer, J. dissenting).

³⁹⁶ *Ex parte Hennen*, 38 U.S. (13 Pet.) 230, 258 (1839).

³⁹⁷ *United States v. Germaine*, 99 U.S. 508, 511 (1878).

³⁹⁸ *Ex parte Hennen*, 38 U.S. at 259.

³⁹⁹ *United States v. Hartwell*, 73 U.S. (6 Wall.) 385, 392 (1868).

⁴⁰⁰ *United States v. Moore*, 95 U.S. 760, 762 (1878); *Perkins*, 116 U.S. at 484.

⁴⁰¹ *Ex parte Siebold*, 100 U.S. 371, 397–99 (1879).

⁴⁰² *Myers v. United States*, 272 U.S. at 159.

⁴⁰³ *Morrison v. Olson*, 487 U.S. 654, 676 (1988); *Ex parte Siebold*, 100 U.S. at 397.

(9) military judges;⁴⁰⁴ and (10) judges in Article I courts.⁴⁰⁵ Given the breadth and depth of the positions the Court has held are offices, OPM thinks it likely that there are many more positions covered by subchapter II that are constitutional offices with significant administrative or policymaking authority. Accordingly, construing the CSRA to prevent the President from waiving the application of subchapter II to policy-influencing positions would create serious constitutional challenges.

OPM also notes that restrictions on removing some non-officer employees may also be constitutionally problematic. To date, the Court has not decided whether restrictions on removing non-officer employees are categorically constitutional. In *Free Enterprise Fund*, the Court stated “[w]e do not decide the status of other Government employees, nor do we decide whether lesser functionaries subordinate to officers of the United States must be subject to the same sort of control as those who exercise significant authority pursuant to the laws.”⁴⁰⁶ This issue has not properly been before the Court because the President has statutory authority to waive Chapter 75’s application to policy-influencing employees. The Supreme Court and lower court judges have pointed out that “[s]enior or policymaking positions in government may be excepted from the competitive service to ensure Presidential control.”⁴⁰⁷ Therefore, the Court has not needed to address the constitutionality of the CSRA’s application to non-officer employees with substantive policymaking or administrative authority.

However, the implication of the Court’s Article II precedents is that Congress cannot shield non-officer employees who exercise meaningful executive power from accountability to the President. The Supreme Court has held that executive officials at all grades must be accountable to the President so that the government is accountable to the people.⁴⁰⁸ Under this logic, officials

who meaningfully and substantively shape Federal policy through the performance of their duties—even if they do not formally exercise “significant” enough authority to be considered an Officer of the United States—must be accountable to the President. Otherwise, the public could not determine where the blame for a “pernicious measure, or series of measures ought really to fall.”⁴⁰⁹

If the CSRA is construed to prevent the President from holding senior employees with policy-making or policy-determining responsibilities accountable, then the “chain of dependence” between government policy and the people would be broken, and the President would not be fully responsible for the executive power wielded in his name.⁴¹⁰ To construe the CSRA in the manner suggested by Commenters 30426 and 32647⁴¹¹ would force courts to determine whether Congress can categorically shield policy-making, sub-officer employees from Presidential accountability, and, if not, where the line between permissible and impermissible restrictions runs. These are weighty constitutional questions. Construing the CSRA to allow the President to exempt positions he determines are policy-influencing avoids the need to judicially resolve these grave constitutional issues.

Commenter 30426 makes a second argument against OPM’s conclusion that the canon of constitutional avoidance requires construing the CSRA to permit the instant rulemaking. Commenter contends that the Supreme Court’s decision in *Arthrex* approved of removal restrictions for inferior officers with substantial authority.⁴¹² In *Arthrex* the Supreme Court held subjecting administrative patent judges’ (APJ) decisions to higher level review, rather than striking down their removal protections, was the appropriate remedy to situate them as inferior officers rather than principal officers.

OPM rejects Commenter’s analysis. Nothing in *Arthrex* suggests that restricting the President’s ability to remove inferior officers with substantial

authority is constitutionally permissible.⁴¹³ The issue of whether APJs could constitutionally possess removal restrictions that bind the President—as opposed to whether severing those removal protections was the appropriate remedy to situate them as inferior officers instead of principal officers—was neither briefed nor decided by the Court.

The *Arthrex* court did allow APJs—constitutional officers—to remain covered by subchapter II of Chapter 75. However, when the Court issued *Arthrex* President Biden made it clear he supported CSRA adverse action procedures and wanted them to apply broadly to career employees. He had rescinded E.O. 13957 and expressed strong opposition to it on policy grounds.⁴¹⁴ Therefore, the issue of Presidentially-binding removal restrictions was not before the Court.⁴¹⁵ The court evaluated a system where inferior officers had removal protections that the President could waive, but expressly had chosen to retain as a policy matter.⁴¹⁶ That is constitutionally quite different. The Court has previously explained that Chapter 75 removal restrictions for senior employees do not raise constitutional issues precisely because the President can waive them—they do not restrict *his* power.^{417 418}

Consequently, OPM correctly noted in the proposed rule that the *Arthrex* remedy was focused on the line dividing principal and inferior officers, not accountability to the President’s Article II executive authority. The Court’s remedy appropriately addressed the relevant constitutional defect—unreviewable decisional authority being

⁴¹³ See *id.*

⁴¹⁴ E.O. 14003, 86 FR 7231 (Jan. 22, 2021).

⁴¹⁵ *Free Enterprise Fund*, 561 U.S. at 507 (“While the full extent of that authority is not before us, any such authority is of course wholly absent with respect to the Board. Nothing in our opinion, therefore, should be read to cast doubt on the use of what is colloquially known as the civil service system within independent agencies.”).

⁴¹⁶ See *id.*

⁴¹⁷ See *Free Enterprise Fund*, 561 U.S. at 506–07 (“Nor do the employees referenced by the dissent enjoy the same significant and unusual protections from Presidential oversight as members of the Board. Senior or policymaking positions in government may be excepted from the competitive service to ensure Presidential control, and members of the Senior Executive Service may be reassigned or reviewed by agency heads (and entire agencies may be excluded from that Service by the President).”) (internal quotation marks omitted).

⁴¹⁸ OPM notes that the regulations this rulemaking rescinds prevent the President from waiving subchapter II’s applicability to incumbent officers and employees. As long as these regulations remain in effect, subchapter II procedures present serious constitutional challenges because they do not apply to policy-influencing positions at the President’s discretion.

⁴⁰⁴ *Weiss v. United States*, 510 U.S. 163, 170 (1994).

⁴⁰⁵ *Freytag*, 501 U.S. at 880–81.

⁴⁰⁶ 561 U.S. at 506 (internal quotation marks omitted).

⁴⁰⁷ *Id.*; see *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 537 F.3d 667, 686–87 (D.C. Cir. 2008) (Kavanaugh, J., dissenting).

⁴⁰⁸ *Seila Law*, 591 U.S. at 203–04 (“[A]s a general matter the Constitution gives the President the authority to remove those who assist him in carrying out his duties. Without such power, the President could not be held fully accountable for discharging his own responsibilities; the buck would stop somewhere else.”) (internal quotation marks omitted); *Free Enterprise Fund*, 561 U.S. at

497–98 (“[T]he Framers sought to ensure that those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest, will depend, as they ought, on the President, and the President on the community.”) (internal quotation marks omitted).

⁴⁰⁹ *Free Enterprise Fund*, 561 U.S. at 498.

⁴¹⁰ See *id.*

⁴¹¹ Commenter 32647 also argues the proposed rule cited dicta from *Free Enterprise Fund*. OPM disagrees as the cited language is clearly part of the analysis in the decision. Compare 90 FR 17212 with *Free Enterprise Fund*, 561 U.S. at 497–506.

⁴¹² 594 U.S. at 25–26.

vested in officers who were not appointed as principal officers—without needing to consider the issue of Article II accountability to the President.⁴¹⁹

Commenter 30246 also argues that OPM has failed to identify any officials covered by subchapter II who have the sort of significant authority that administrative judges exercise, hold positions established by law, and have been found constitutionally ineligible for adverse action coverage under subchapter II. Commenter misses OPM's point that these cases do not exist because 5 U.S.C. 7511(b)(2) generally provides the President with (heretofore latent) authority to exempt relevant positions from those procedures. As a result, courts have not had to confront this question. As for specific positions adjudicated by a court, as explained above, under *Freytag*,⁴²⁰ *Lucia*,⁴²¹ and *Arthrex*,⁴²² adjudicatory positions such as MSPB administrative judges are generally offices. If 5 U.S.C. 7511(b)(2) does not allow the President to exclude these positions from subchapter II's coverage, and their adjudicatory duties have substantive administrative or policymaking consequences, then under *Seila Law* any Presidentially-binding removal restrictions are unconstitutional.

Commenter 30426 further argues that having failed to identify any actual inferior officers subject to section 7511(b)(2)'s protections, and in light of *Arthrex*'s holding that even such officers—if they existed—can constitutionally have removal restrictions, OPM fails to support its argument that the doctrine of constitutional avoidance requires reading the term of art “confidential, policy-determining, policy-making or policy-advocating” as including career employees. OPM rejects this analysis for the reasons discussed above. OPM has identified such offices, and this reading misconstrues *Arthrex*'s holding.

Commenter 30426 also argues that “even if OPM could identify any such officers, it may well be, as in *Arthrex*, that a simple change to the nature of their relationship with their supervisors would remedy any perceived constitutional issues, while also honoring Congress' grant of adverse action appeal rights to all career employees.” Commenter 30426 also claims that “*Arthrex* teaches that no

change would be required at all if their work is already subject to review by supervisors possessing the authority to overrule them or render final decisions, as would likely be the case with an employee covered by” subchapter II.

Commenter 30426 misunderstands *Arthrex* and Appointments Clause caselaw. The test for an officer is wielding “significant authority.”⁴²³ Inferior officers are frequently subject to higher level review and often do not have ultimate authority on disputed matters.⁴²⁴ Providing additional supervision of an inferior officer's duties, or changing their reporting lines, could ensure that they are not principal officers but would not still leave them inferior officers wielding significant authority. If this authority involves substantive administrative or policymaking responsibilities, they must constitutionally be accountable to the President.

Commenters 8019, 13440, 13602, and others argued that Schedule Policy/Career and OPM's reasoning is contrary to the Supreme Court's decisions in *Morrison v. Olson*,⁴²⁵ and/or *United States v. Perkins*,⁴²⁶ both of which upheld restrictions on Presidential removal of inferior officers. *Morrison* upheld such restrictions for the position of Independent Counsel, while *Perkins* upheld them for a naval cadet engineer. Commenters similarly pointed to *Myers v. United States*,⁴²⁷ where the Supreme Court held Congress could restrict the President's ability to remove inferior officers appointed without Senate consent.⁴²⁸ Commenters also pointed to *Humphrey's Executor v. United States*,⁴²⁹ which upheld congressional restrictions on removal of Federal Trade Commission members—principal officers. Commenters argue that these cases show restrictions on removing even senior officers are constitutionally unproblematic.

As discussed extensively above, OPM believes modern Supreme Court caselaw reinforces the case for this rulemaking.

In *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), the Court clarified *Morrison* and *Perkins* as a narrow exceptions that stand only for the proposition that Congress can restrict removals of inferior officers “with limited duties and no policymaking or administrative authority.”⁴³⁰ The Court also held that restrictions on removals of such officers constitute “the outermost constitutional limits of permissible congressional restrictions on the President's removal power.”⁴³¹ Consequently, following *Seila Law*, OPM does not construe *Perkins*, *Morrison*, or *Myers* as standing for the proposition that Congress can restrict the President's ability to remove inferior officers who wield substantive administrative or policymaking authority. OPM instead believes, and agrees with Commenter 35512, that the modern caselaw strongly suggests that the narrow *Morrison* and *Perkins* exception would be unlikely to apply to most inferior officers who perform policy-influencing duties that would qualify for inclusion in Schedule Policy/Career.

While this rule applies to policy-influencing positions as defined at 5 U.S.C. 7511(b)(2) rather than strictly to inferior officers, OPM recognizes that there may be an overlap between these roles in a number of circumstances. Given the broad concerns expressed by the Court in *Free Enterprise Fund* that “[t]he President cannot ‘take Care that the Laws be faithfully executed’ if he cannot oversee the faithfulness of the officers who execute them,”⁴³² OPM believes the better interpretation of these precedents is that the President and/or agency heads may remove inferior officers despite putative statutory restrictions on such removals. Accordingly, to the extent this rule may apply to policy-influencing officials who are also deemed to be inferior officers, OPM believes that the President and/or his agency heads must have sufficient constitutional authority to effect removals when deemed necessary. Interpreting subchapter II to deny the President this flexibility would render the statute unconstitutional in these applications. By contrast, OPM's reading of the CSRA—that the President can discretionarily remove adverse action procedures from policy-influencing positions—eliminates this constitutional difficulty.

OPM also believes reliance on *Humphrey's Executor* to rebuff this rulemaking is misplaced. The Supreme

⁴¹⁹ The Appointments Clause requires all principal officers to be appointed by the President with Senate consent, but permits Congress to authorize the President or agency heads to appoint inferior officers without Senate involvement.

⁴²⁰ 501 U.S. at 881–82.

⁴²¹ 585 U.S. at 248–49.

⁴²² 594 U.S. at 23.

⁴²³ *Lucia*, 585 U.S. at 245.

⁴²⁴ See, e.g., *Freytag*, 501 U.S. at 881–82 (holding that the judges were inferior officers, who had significant authority, despite issuing decisions that did not take effect unless approved by a superior).

⁴²⁵ 487 U.S. 654 (1988).

⁴²⁶ 116 U.S. 483 (1886).

⁴²⁷ 272 U.S. 52 (1926).

⁴²⁸ The Supreme Court made a similar finding in *Perkins*, holding “[w]e have no doubt that when Congress, by law, vests the appointment of inferior officers in the heads of departments, it may limit and restrict the power of removal as it deems best for the public interest. The constitutional authority in Congress to thus vest the appointment implies authority to limit, restrict, and regulate the removal by such laws as Congress may enact in relation to the officers so appointed.” See 116 U.S. at 485.

⁴²⁹ 295 U.S. 602 (1935).

⁴³⁰ 591 U.S. at 212.

⁴³¹ *Id.* at 218.

⁴³² *Free Enterprise Fund*, 561 U.S. at 484.

Court's decision in *Humphrey's Executor* pertains to PAS members of multi-member regulatory boards and commissions that do not wield substantial executive power. Presidential appointees are not covered by subchapter II and are not the subject of this rule. The Supreme Court has also recently announced it will consider whether to overrule *Humphrey's Executor* and has stayed lower-court orders directing the reinstatement of tenure-protected independent agency heads that President Trump dismissed.⁴³³ Consequently, OPM infers that *Humphrey's Executor* may not be good law for long.

Commenter 8019 also argues that the justification for Schedule Policy/Career ignores the tripartite categorization of Federal workers between Principal Officers, Inferior Officers, and employees set forth in cases such as *Lucia v. Securities and Exchange Commission*, with the Supreme Court expressing no concerns with removal restrictions on mere employees.⁴³⁴ However, as the commenter notes, the *Lucia* court refused to take up the question of the constitutionality of “for cause” removal protections,⁴³⁵ and, indeed, Justice Breyer, writing for three justices in partial concurrence, specifically complained about the Court majority's refusal to take the questions specifically at issue in Commenter 8019's argument. In *Free Enterprise Fund* (2010) the Roberts Court similarly expressly declined to reach the question of how much accountability “lesser functionaries” must have to the President while noting that section 7511(b)(2) authorizes the President to except policymaking positions “to ensure Presidential control.”⁴³⁶ OPM believes that modern separation of powers jurisprudence indicates that Congress cannot insulate inferior officers with administrative or policymaking responsibilities from accountability to the President. For the reasons already discussed, OPM does not accept as controlling Commenter's argument that subchapter II raises no constitutional questions: subchapter II covers some inferior officers which raises clear constitutional problems, and it is not well-established Congress can insulate policymaking but non-officer employees from Presidential

accountability. The Court's reasoning in cases like *Free Enterprise Fund* and *Seila Law* suggests but that, at least for some policymaking employees, Congress cannot.

iv. Additional Objections

Commenter 30426 argues that the proposed amendments are contrary to law, ultra vires, and unconstitutional. He footnotes to Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer* on the President taking measures incompatible with the expressed or implied will of Congress his power is at its lowest ebb.

As the Supreme Court recently explained, ultra vires applies only when an agency has taken action entirely “in excess of its delegated powers and contrary to a specific prohibition” in a statute.⁴³⁷ By contrast, here the President is not acting contrary to a specific statute but under specific statutory authorization—5 U.S.C. 7511(b)(2)(A). This rule falls under Justice Jackson's category one: “When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.”⁴³⁸ This rule is a fully lawful *intra vires* action, backed by the full power of the President and of Congress.

Commenter 30426 argues that public employees have less capacity than members of the general public to effect political change because applicable First Amendment precedents give them little protection when speaking out about personnel practices of a governmental employer. Commenter argues this heightens due process concerns. This is demonstrably untrue. In fact, political scientists have long documented that Federal employees are in fact a powerful and effective interest group.⁴³⁹

Commenter 30426 cites a 2016 Supreme Court case holding that the First Amendment prohibits discrimination against government employees based on their perceived political affiliation, not just their actual political affiliation, and that the entire Schedule Policy/Career enterprise is designed to discriminate against Federal employees because of their perceived political affiliation, therefore, violating the First Amendment.

OPM respectfully disagrees with Commenter 30426's premises and reading of the First Amendment. To

succeed on a First Amendment retaliation claim a plaintiff must prove that the current career employees bound for Schedule Policy/Career engaged in conduct protected under the First Amendment; the President, OPM, and/or their employing agencies took sufficient action to deter a person of ordinary firmness from exercising their First Amendment rights; and that a causal link exists between the exercise of their First Amendment rights and the reassignment to Schedule Policy/Career.⁴⁴⁰ Commenter's argument fails every step of this analysis.

Commenter 30426's claims the President perceives Federal employees to be politically hostile is incomplete and misleading. While the President has taken issue with the conduct of some Federal employees, the President believes there are many other hard-working Federal employees performing valuable work for the American people. Commenter ignores the many times, discussed above, that the President has praised the work of Federal employees. Reading a few hyperbolic remarks literally and with no further context is highly misleading and does not establish a “perceived political affiliation” for the entire Federal workforce that triggers First Amendment scrutiny.

Moreover, there is no retaliatory action. The entire Schedule Policy/Career process is proceeding without any regard to political affiliation. OPM action in reviewing agencies' requests for placement of employees in Schedule Policy/Career does not include review of any employee's identity or other information that could reveal an employee's political affiliation. Schedule Policy/Career recommendations are focused on position duties, not individual traits of incumbent employees. There is simply no consideration of Federal employees' political views at any time, and thus no retaliatory action for employees' putative perceived political affiliations.

Additionally, there is no causal nexus between the putative First Amendment activity and placement in Schedule Policy/Career. In E.O. 14171 the President explained his motivation for issuing the order, namely the difficulty of removing poor performers and those who engage in misconduct (including policy resistance). Commenter 30426 does not show that the President was not motivated by these concerns. Nor could Commenter 30426, because these concerns—as OPM has documented—are real and serious and are why the

⁴³³ See, e.g., *Trump v. Wilcox*, 595 U.S. ___, 145 S.Ct. 1415 (2025), (granting stay).

⁴³⁴ 585 U.S. 237, 244–45 (2018).

⁴³⁵ See *Lucia*, 585 U.S. 237, 255–56 (2018) (Breyer, J., concurring in part and concurring in the judgment) (disagreeing with the majority's decision of the case on constitutional grounds where they did not also take up the question of removal).

⁴³⁶ 561 U.S. at 506.

⁴³⁷ *Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 681 (2025).

⁴³⁸ *Youngstown Sheet*, 333 U.S. at 635–36.

⁴³⁹ See, e.g., Johnson & Libecap at 17.

⁴⁴⁰ See *Black Lives Matter DC v. Trump*, 544 F.Supp.3d 15, 46 (D.D.C. 2021).

President issued the order. OPM agrees with the Commenter that Schedule Policy/Career employees retain their First Amendment right to be free from political discrimination, and the President has separately commanded as much.⁴⁴¹ So long as Schedule Policy/Career employees work effectively to carry out the President's agenda, their jobs will be safe, no matter their personal political views.

Various commenters asserted that the rule violates *Pickering v. Board of Education*,⁴⁴² *Rutan v. Republican Party*,⁴⁴³ *Janus v. AFSCME*,⁴⁴⁴ *Branti v. Finkel*,⁴⁴⁵ by requiring "compelled speech", viewpoint discrimination, and other mandatory viewpoints, thus allegedly violating the First Amendment. E.O. 14171 explicitly emphasizes that patronage remains prohibited by defining Schedule Policy/Career to only cover "career positions." It also expressly describes what is and is not required of Schedule Policy/Career employees prohibiting any requirements that employees pledge personal or political support for the President or his policies. The order and this rule also retain merit-based competitive hiring procedures. In short, the President has repeatedly forbidden treating Schedule Policy/Career as patronage positions and consequently this rule raises no such constitutional concerns.

Some commenters asserted that the rule will encourage manipulation of data, e.g., scientific and economic, for political purposes. Several commenters suggested that the proposed rule, by modifying standards for discipline and dismissal, will allow political appointees to threaten or punish career appointees in Schedule Policy/Career positions in order to manipulate, alter, or withhold data necessary for informed scientific and economic decision-making. The operative theory behind the comment appears to be that professional standards can only be maintained if extensive regulatory and administrative hurdles exist with

respect to discipline or dismissal of employees. To the contrary, most employees throughout the American economy enjoy limited or non-existent restrictions on their removal for performance or disciplinary reasons. This has not affected the quality of the output of most employees who serve under "at will" employment circumstances. There is no reason to believe that employees serving under Schedule Policy/Career will be subject to lesser standards or professional expectations. One reason for establishing Schedule Policy/Career is to hold employees to higher standards of performance without the need for supervisors and/or managers to subject themselves to time consuming and often crippling procedures for correction of substandard or unprofessional work. Moreover, as noted *supra*, E.O. 14171 reinstates and retains the language provided in E.O. 13957 that requires agencies to establish rules to prohibit the same personnel practices prohibited by section 2302(b) of title 5, United States Code, with respect to any employee or applicant for employment in Schedule Policy/Career. Thus, in the very rare circumstances where employees may be improperly influenced to take action that is not warranted by professional standards, procedures will be in place to ensure that PPPs will not be tolerated for positions determined to be included under Schedule Policy/Career. OPM notes that commenters do not provide examples of at-will employment of employees with scientific responsibilities in state government resulting in such abuses, which strongly suggests such abuses under at-will employment systems are rare.

Commenters 3768, 13112, and others, expressed significant concern with the ability of agencies to subvert reduction in force procedures through placement of personnel in Schedule Policy/Career and subsequently terminating them. OPM believes such actions would be inconsistent with the purpose of the final rule. It would be inappropriate for agencies to exercise authority under this rule as a tool to conduct broad workforce reshaping simply to avoid reduction-in-force procedures. The proposed rule is intended to provide agencies with authority to address individual instances of unacceptable performance or misconduct demonstrated by career Schedule Policy/Career officials whose duties and responsibilities are critical to executing the President's policy agenda. Where an agency intends to release or terminate an employee or employees under

conditions described in part 351 of this chapter, the agency should follow those procedures, or like procedures under similar authorities. Moreover, OPM is unaware of any initiatives to use Schedule Policy/Career as an alternative to RIFs for workforce restructuring and has no reason to believe the administration is contemplating such a measure. Baseless and inaccurate speculation is not a reason to decline to finalize the proposed rule.

Various commenters suggested that the rule violates the Major Questions Doctrine.⁴⁴⁶ The Major Questions Doctrine is a principle of statutory interpretation in administrative law that limits the authority of Federal agencies to regulate matters of major political or economic significance unless Congress provides explicit authorization.⁴⁴⁷ This rule does not violate the Major Questions Doctrine for four reasons. First, Congress has explicitly authorized these actions. Section 7511(b)(2) provides for excluding positions in the excepted service that are policy-influencing from subchapter II's coverage. Congress has spoken clearly and said the President can do this. Second, the Major Questions Doctrine is a tool for interpreting the scope of congressional delegation of authority to the executive branch. It is not clear this doctrine applies when interpreting the scope of congressional restrictions on the President's Article II authority over the executive branch. In such cases the President's own constitutional authority must also be considered. So, the Major Question Doctrine may not apply regardless. Third, this rule is expected to affect only about 2 percent of the Federal workforce (50,000 positions out of 2.2 million). This modest level of affected employees is not significant enough to implicate the Major Questions Doctrine. Finally, Presidents have commonly created or modified new groups of excepted positions within the civil service. Congress could hardly have failed to anticipate this routine use of Presidential authority. In the last 15 years, four new categories of excepted service positions have been created by both a Democratic and Republican President. Accordingly, OPM believes the Major Questions Doctrine is inapplicable to this rulemaking.

In a similar vein, other commenters asserted that Schedule Policy/Career violates the Non-Delegation Doctrine.

⁴⁴⁶ *West Virginia v. Env't Prot. Agency*, 597 U.S. 697 (2022).

⁴⁴⁷ OPM notes that the Major Questions Doctrine applies to placing limits on congressional delegations to the executive branch. It has no application to inherent Article II authorities.

⁴⁴¹ OPM also notes that under First Amendment precedents governing public employees, government actions that restrict constitutionally protected speech are subject to a balancing test that weighs the value of the employees' speech interest against the government's need for efficient operations. See *Connick v. Myers*, 461 U.S. 138 (1983). OPM believes that this rulemaking would pass this balancing test if it was subject to First Amendment scrutiny as the rule will promote efficient management of the executive branch. However, for the reasons outlined above, OPM does not believe First Amendment scrutiny is triggered and so courts would not reach this balancing test.

⁴⁴² 391 U.S. 563 (1968).

⁴⁴³ 497 U.S. 62 (1990).

⁴⁴⁴ 585 U.S. 878 (2018).

⁴⁴⁵ 445 U.S. 507 (1980).

The Non-Delegation Doctrine is a concept that holds that one branch of government cannot delegate to another branch of government the power invested in that branch.⁴⁴⁸ OPM presumes that the commenter is suggesting that the creation of Schedule Policy/Career in the excepted service requires legislative branch action. OPM first notes that the constitution gives the President responsibility for supervising the executive branch. Consequently section 7511(b)(2) is not a delegation of congressional authority to the President but a limitation on congressional restrictions on pre-existing Presidential authority. This does not raise non-delegation concerns because Congress is not “delegating” executive power to the President in the first place. It is declining to restrict power the President already possesses. Second, even if non-delegation principles apply the Supreme Court’s caselaw requires only an “intelligible principle” to guide executive branch action.⁴⁴⁹ The policy-influencing terms supply exactly that, so non-delegation requirements are satisfied regardless. Third, even assuming *arguendo* the commenter is correct on this point and Schedule Policy/Career requires legislative action, the commenter fails to account for that Title 5 already gives the President authority to take these actions, as discussed throughout this rulemaking. OPM also notes that it would create serious Constitutional concerns under separation of powers doctrine to suggest that the President cannot hold policy-influencing subordinates accountable. Thus, Schedule Policy/Career does not run afoul of the Non-Delegation Doctrine.

Other commenters asserted that Schedule Policy/Career is arbitrary and capricious under *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*⁴⁵⁰ The preamble to the rule clearly articulates the benefits of Schedule Policy Career and provides a reasoned analysis. Section 7511(b)(2) permits the President to establish a new category of positions in the excepted service. OPM’s April 2024 final rule purposely misinterpreted section 7511(b)(2) as a “term of art” in order to avoid the plain meaning of the language of the statute, and to create a roadblock⁴⁵¹ to a future

Administration properly interpreting this language. Moreover, OPM has established cost savings accruing to government agencies through use of Schedule Policy/Career rather than the use of traditional adverse action procedures.

Commenter 18863 asserts that the proposed rule improperly justifies use of E.O. 14171 to nullify the April 2024 final rule. Presumably, this commenter would require OPM to first “reverse” the April 2024 rule before proceeding to promulgate the instant rule. OPM strongly disagrees with this clumsy and unnecessary approach. The President establishes civil service policies in accordance with statutory authorities and OPM implements these policies.⁴⁵² Even assuming *arguendo* that the April 2024 final rule must be rescinded in order for the current rule to be effected, the commenter provides no reason why OPM cannot both rescind the 2024 rule and *simultaneously* promulgate a replacement rule—which is exactly what this rulemaking action accomplishes.

Some commenters tried to argue that Schedule Policy/Career will upend labor-management relations. The premise of this comment appears to be that placing policy-influencing positions into an “at will” status will substantially disturb the relationship between management and non-management employees within Federal agencies. At this time, OPM estimates that approximately 50,000 positions governmentwide will be placed into Schedule Policy/Career. This represents about 2 percent of the entire executive branch employment total (excluding U.S. Postal Service). For about 98 percent of employees, there will be no change in pre- and post-termination notice and due process procedures. The charge that changing removal procedures for 2 percent of all Federal employees will significantly upend and disturb labor relations seems designed to foment hysteria. Moreover, the vast majority of employees who will be affected by these proposed changes will typically be employed in more prominent and higher-graded positions that involve policy-influencing work. In particular, OPM expects that relatively few Federal employees represented by labor unions will be transferred into Schedule Policy/Career. This is because 5 U.S.C. 7103(a)(11) and 7112(b)(1) statutorily exclude from collective bargaining management officials engaged in formulating, determining, or

influencing agency policy. As a result, few bargaining unit employees perform duties that would make their positions eligible for Schedule Policy/Career.

One commenter asserted that the rule is a violation of 5 U.S.C. 555(b). This statutory provision relates to persons who are compelled to appear before an agency. They have a right to be represented by counsel or in some cases by another qualified party. Schedule Policy/Career contains no provision compelling an appearance before an agency representative.

Various commenters asserted that Schedule Policy/Career violates the Antideficiency Act ADA because it will necessitate unauthorized spending on training and implementation. Nothing in Schedule Policy/Career rule *requires* expenditures of appropriated funds beyond that which are normally appropriated to agencies for carrying out personnel management functions.

Other commenters argued that Schedule Policy/Career violates the Paperwork Reduction Act. This rule does not violate the PRA because it imposes no paperwork requirements on parties, whether current employees, employees converted to Schedule Policy-Career, or applicants for Federal employment including applicants for positions under Schedule Policy-Career.

D. Schedule Policy/Career Will Improve Government Performance

OPM believes that implementing E.O. 14171 would improve the Federal Government’s performance and accountability to the American people for several reasons.

i. Recruitment and Retention Are Unharmed by This Rule

Commenter 30765 and others argue implementation of Schedule Policy/Career will exacerbate recruitment and retention problems as applicants might be leery of taking jobs classified as Schedule Policy/Career if they knew they could be removed after a change in administration. This commenter, and others, voiced concerns that this rule would undermine agency recruitment and retention efforts. Some, like Commenter 16246, feared it would eliminate a competitive advantage in Federal hiring and recruitment, and that fear of job loss or reprisal or politicization would reduce the attractiveness of Federal jobs. Others, like Commenter 10727, were concerned that instituting Schedule Policy/Career would open the door to retribution and argued that individuals “considering whether to accept a career civil service position need to know that they will be valued for their knowledge, skills, and

⁴⁴⁸ *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928).

⁴⁴⁹ See, e.g., *Fed. Comm’n Comm’n v. Consumers Rsch.*, 606 U.S. 656 (2025).

⁴⁵⁰ 463 U.S. 29 (1983).

⁴⁵¹ National Active and Retired Federal Employees Association, “OPM Proposes Rule Designed to Prevent Another Schedule F,” (Sept. 19, 2023), <https://www.narfe.org/blog/2023/09/19/>

opm-proposes-rule-designed-to-prevent-another-schedule-f/.

⁴⁵² 5 U.S.C. 1103(a)(5–7).

abilities; evaluated based on merit; and not only protected from retribution for offering their candid opinions but encouraged to do so.” Relatedly, many of these commenters suggested that agency missions would be adversely affected by the destabilizing of the civil service, with large numbers of experienced staff leaving their positions during each change of administration.

OPM believes that the new Schedule Policy/Career will not create substantive recruitment and retention concerns or service disruption. OPM considers the commenters to fundamentally misunderstand the operations of this rule and Schedule Policy/Career more broadly. Commenters appear to characterize this rule as an attempt to politicize career positions and thereby create a new *de facto* schedule for political appointees. As discussed above, Schedule Policy/Career flatly rejects a return to the patronage system. OPM notes that E.O. 14171 defines Schedule Policy/Career positions as career positions, not political appointments. It was redesignated from “Schedule F” to “Schedule Policy/Career” precisely to clarify this status. Therefore, the E.O. not only provides, but generally requires, that Schedule Policy/Career positions be filled using merit-based competitive hiring procedures. As part of this process, political loyalty to the President is forbidden from being a prerequisite of holding a Schedule Policy/Career position. The E.O. goes a step further, requiring agencies to proactively establish procedures to ensure compliance with that directive, to the extent those procedures are not already in place.

Moreover, employees in Schedule Policy/Career positions who perform well, and faithfully implement the President’s agenda to the best of their ability, have little reason to fear dismissal based on non-merit factors. As discussed above, firing experienced policy-influencing employees who perform their duties with integrity and excellence would be counterproductive. While dismissing Schedule Policy/Career employees for poor performance or misconduct may create some disruption, over the long-term the government benefits from employing a high-performing and ethical workforce that understands that democracy requires subordinating their personal policy preferences to those of the voters. Consequently, OPM expects Schedule Policy/Career will not bring about the destabilizing separations commenters fear will occur, nor will it lead to losses of institutional knowledge or reduced

employee investment in skills within agencies.

OPM also does not believe that Schedule Policy/Career would impair Federal recruitment and hiring efforts, as some commenters, including but not limited to Commenters 0941, 13414, and 16276, suggest. As noted, nothing in this rule permits political loyalty or litmus tests as part of the hiring process. Employees considering whether to apply for a Policy/Career position will know that if hired, it is because they were evaluated based on merit, taking their knowledge, skills, and abilities into account, not their political affiliation. They would also be filling long-term positions that do not typically disappear upon a change in administration. OPM also notes that systematically retaining poor performers, or those who engage in serious misconduct such as that which occurred at the FDIC and elsewhere, due to an inability to successfully utilize chapter 75 procedures, harms employee morale and can hurt recruitment and retention, especially when the individuals being retained are in influential positions such as those that will be classified as Schedule Policy/Career.

OPM agrees with Commenters 2104, 3624, 7170, 26062, and others who argue that adverse action procedures and appeals give Federal employees greater job security than exist in most other jobs. To the extent that employees value this job security, Schedule Policy/Career’s removal of adverse action procedures would reduce the relative value of Federal employment to them. However, OPM no longer believes that this change will significantly impair Federal recruitment or hiring. As Commenter 32359 notes, Federal employees appear to place relatively little value on the availability of adverse action procedures.⁴⁵³ Eliminating these procedures for a small fraction of the Federal workforce is thus unlikely to meaningfully affect agency recruitment and retention. In addition, to the extent some employees may seek to leave the Federal Government for lack of job security, OPM views this as a positive

⁴⁵³ Comment 32359 draws OPM’s attention to a recent Congressional Budget Office evaluation that concluded three-quarters of Federal employees value adverse action protections at less than 5 percent of their salary. See Congressional Budget Office Cost Estimate, *Reconciliation Recommendations of the House Committee on Oversight and Government Reform* at 6–7 (May 13, 2025), <https://www.cbo.gov/system/files/2025-05/HouseOversight2025Reconciliation.pdf>. OPM hereby incorporates this cost estimate into the administrative record and takes it to imply that, while job security is a benefit of Federal employment, Federal employees do not see it as a major element of their compensation packages.

result, opening the position to be filled by an employee who would seek to excel in a policy-influencing position who is committed to executing on the President’s policy agenda and less concerned about personal job security and bureaucratic processes.

Even excluding the nominal value of job security, the Federal Government offers a more generous benefits package than most comparable private-sector employers. For example, the Federal Government provides its employees with both defined benefit and defined contribution retirement plans. Very few private employers offer comparably generous retirement benefits. As a result, the Government generally offers Federal employees a benefits package that exceeds what they could expect to earn in the private sector for similar work. Congressional Budget Office data shows that Federal employees with a bachelor’s degree receive \$31.70 an hour in non-wage benefits, while comparable private-sector workers receive only \$22.00 an hour in non-wage benefits.⁴⁵⁴ For employees with a Master’s degree, those figures are \$33.50 and \$26.20 an hour in the Federal and private sectors, respectively.⁴⁵⁵ Even if Schedule Policy/Career reduces job security to some degree, the Federal Government will still offer a highly competitive benefits package necessary to attract quality talent.

Commenters such as 8375, 31460, and others characterize the rule as creating, functionally, at-will employees, and that this will drive knowledgeable employees into the private sector where they, in the words of the commenters, will not be unfairly targeted for dismissal for arbitrary reasons. This criticism, however, neglects that the vast majority of American employers also operate at-will. Consequently, agencies will not operate at a disadvantage in this regard vis-à-vis alternative jobs that prospective civil servants could apply for. To the extent this assessment is mistaken, however, OPM believes benefits of Schedule Policy/Career outweigh any such potential costs.

Commenters 14729, 23838, 28756, and 32822 argue that this rule could impede agencies’ ability to hire scientific and technical personnel, particularly for scientific and cybersecurity positions. They assert that scientists require independence from agency leadership to adhere to the

⁴⁵⁴ Congressional Budget Office, *Comparing the Compensation of Federal and Private-Sector Employees in 2022* at 15 (Apr. 2024), <https://www.cbo.gov/system/files/2024-04/59970-Compensation.pdf>.

⁴⁵⁵ *Id.*

scientific method free from political intrusion and so scientists would opt to go elsewhere. Similarly, commenters suggest that technical positions in high demand, like cybersecurity, being classified as Schedule Policy/Career would harm the Federal Government's ability to recruit talent.

OPM believes these commenters are exaggerating the scope or impact of the proposed rule on the scientific, cybersecurity, and technical communities. E.O. 14171 focuses coverage of Schedule Policy/Career on policy-influencing positions that exercise significant authority to shape and implement actions that significantly impact all Americans. These positions exercise authority delegated to them by the President. Although the E.O. does not specifically exclude these highly technical positions (*e.g.*, scientists, cybersecurity experts, etc.) from inclusion in Schedule Policy/Career, it would be inappropriate to include or exclude these positions solely based on these duties. Rather, agencies will need to assess each position's duties within the meaning of their "confidential, policy-determining, policy-making, or policy-advocating character." It is certainly possible that agencies will identify scientific and technical positions for inclusion in Schedule Policy/Career. However, OPM expects those positions will reflect policy-influencing duties that, for example, directs which scientific projects should be resourced throughout the agency or whether to advocate to Congress for additional appropriated funds to carry-out new projects. Each agency's determination about the policy-influencing character of these positions, not the fact that they conduct research or perform highly technical duties or functions will determine whether or not they are recommended for inclusion in Schedule Policy/Career. OPM expects that, generally, relatively few of these line scientific, cybersecurity, or technical positions will be moved into Schedule Policy/Career because most do not perform policy-influencing work. And as described elsewhere in this final rule, the number of impacted employees across the entire Federal civil service is relatively small—approximately 2%.

Finally, even if OPM believed that Schedule Policy/Career would impair agency recruitment and retention efforts, such costs must be considered alongside the benefits discussed above. Commenter 32359 draws OPM's attention to McKinsey research showing underperforming employees can reduce overall team productivity by 30 percent. OPM agrees this is a significant impairment on agency operations and

believes the benefits of facilitating removal of underperforming employees who impair agency performance exceed the costs.

Moreover, the President has determined that the benefits of Schedule Policy/Career—which include enabling agencies to promptly dismiss underperforming senior employees who drag down their agencies' overall performance—outweigh the costs. Constitutionally and statutorily, the President is individually authorized to weigh those policy costs and benefits and decide which course of action to pursue. The President has determined that the challenges discussed above necessitate creating Schedule Policy/Career. It is OPM's responsibility to assist the President in the carrying out of his duties, not vice versa. Consequently, even if OPM were not independently persuaded that the benefits of Schedule Policy/Career outweigh the costs—and OPM is—OPM would credit a Presidential judgement on the matter and adopt the same conclusion.

ii. This Rule Will Improve Performance Management

Commenters 0563, 1152, 1142, and others argue Schedule Policy/Career is a solution in search of a problem because it seeks to bypass the performance management shortcomings that have plagued Federal agencies. They suggest that it is a poorly designed tool to improve performance management because OPM has failed to provide evidence to suggest that all poor performers are policy-influencing employees, and, therefore, streamlining terminations based on the type of work an employee performs rather than how well the employee performs is suboptimal. OPM agrees that were Schedule Policy/Career designed to be a performance management tool for the entire Federal workforce it would be poorly designed. However, commenters misunderstand the purpose of E.O.s 13957 and 14171, and thereby, this rule, because it is not intended to be a performance management tool for the entire Federal workforce.

Neither E.O.s 13957 and 14171 nor this final rule claim to solve performance management challenges across the entire Federal workforce. Instead, the E.O.s and this rule explain that poor performance by policy-influencing employees is especially problematic because those are the employees who shape how the agency itself executes its mission. So, while OPM agrees with the fact that an employee encumbers a policy-influencing position says nothing about

their individual performance, OPM recognizes that it says a lot about the ramifications if they perform poorly. OPM also acknowledges that chapter 43 and 75 procedures make it difficult for supervisors to effectively address poor performance or misconduct. The President has determined that heightened performance accountability is necessary in policy-influencing positions. This rulemaking and the executive orders underpinning it are not intended to address all performance management across the entire Federal workforce. Rather, the final rule is intended to address the serious consequences of poor performance, misconduct, or anti-democratic resistance committed by career employees critical to executing the President's agenda.

Commenters 12636, 13363, 19094, 34954, and others, expressed concern that Schedule Policy/Career employees should retain collateral rights such as freedom from unlawful discrimination on the basis of race, sex, religion, and other protected characteristics. They also argued that employees will be subject to more discrimination as a result of the rule. OPM notes that nothing in this rule precludes an employee covered by this final rule from filing complaints of discrimination with the EEOC. This rule provides for termination for misconduct or poor performance, and discrimination complaint processing is out of scope for this rule. Where an employee complains of discrimination, he or she can seek protection from unlawful practices through the EEO complaint process. Also, commenters' concerns that covered employees will be at more risk of experiencing invidious discrimination as a result of this rule are mere speculation. While covered employees may seek redress of terminations or other adverse actions at the EEOC, any such increase is not, on its own, indicative of more discrimination. And any such increase in the number of complaints brought before the EEOC is outweighed by the benefit to the public by enabling the President to execute on his constitutional prerogative to enact his agenda as endorsed by voters.

Commenters 14285 and 35065 argue that without access to appeal procedures under chapters 43 and 75, employees will pursue their claims in Federal district court. However, binding Supreme Court precedent holds that the CSRA is the exclusive remedial statutory framework for adverse action appeals and judicial review. *See United States v. Fausto*, 484 U.S. 439 (1988). Thus, employees whom the CSRA

statutorily precludes from appealing adverse actions cannot obtain judicial review in Federal court. Indeed, the CSRA was passed in large part to create a unified framework for judicial review of adverse actions instead of a patchwork of district court rulings. Rather than reliance on Article III courts, E.O. 13957 provides for internal executive branch procedures to prohibit unlawful discrimination. The CSRA does not give district courts jurisdiction to hear challenges to actions ordinarily covered under chapters 43 and 75 taken against Schedule Policy/Career employees.

iii. Compensation Incentives

Comment 3727 raised questions on whether employees appointed under Schedule Policy/Career will be eligible for various compensation incentives including student loan repayment, awards, recruitment, relocation, and retention incentives (“3Rs”), and severance pay. Commenter 1876 suggested OPM implement retention incentives for long-tenured employees placed into Schedule Policy/Career to prevent brain drain in critical policy areas.

OPM appreciates these comments and recognizes that reassigning employees to positions in Schedule Policy/Career may result in ineligibility for certain incentives. These tools are used to recruit, retain, and relocate talent to positions critical to the agencies’ missions and should remain available to agencies on a limited basis as positions transition to Schedule Policy/Career. OPM is basing this decision on needing to provide a grace period for continuation of receipt of an incentive(s) upon principles of equity and good conscience, to ensure that the government upholds its agreements with employees, and to mitigate the impact described by Commenter 1876. Therefore, OPM is modifying its regulations as immediately discussed below to allow agencies and employees under an applicable incentive agreement to complete the terms of their agreements or continue retention incentive payments when no service agreement is required as warranted.

Schedule Policy/Career employees would normally be ineligible for payments under the Student Loan Repayment Program in 5 U.S.C. 5379, given the statutory exclusion of any employee who “occupies a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.” 5 U.S.C. 5379(a)(2). OPM is therefore modifying its regulations at part 537 to allow

employees whose positions are moved into Schedule Policy/Career to continue to receive student loan repayment benefits under the terms of the applicable service agreement unless eligibility is lost as described in 5 CFR 537.108.

Schedule Policy/Career employees would normally be ineligible for 3Rs under 5 U.S.C. 5753(a)(2)(C) and 5754(a)(2)(C). If employees receiving one of the 3Rs have already entered into agreements with their agency, maintenance of the status quo is strongly desired, provided the employees are otherwise fulfilling the terms of their service agreements. OPM is, therefore, modifying its regulations at subparts A, B, and C of part 575 to allow agencies to continue paying any outstanding 3Rs under the terms of any existing service agreements. For recruitment and relocation incentives, agencies will still be able to terminate service agreements under 5 CFR 575.111(a) and 575.211(a), respectively, for employees whose positions are moved into Schedule Policy/Career. Employees would be entitled to all recruitment or relocation incentive payments that are attributable to completed service and to retain any portion of a recruitment or relocation incentive payment that they received that is attributable to uncompleted service as provided in 5 CFR 575.111(e) and 575.211(e). For retention incentives, OPM is authorizing agencies to continue paying the incentives to employees whose positions are moved into Schedule Policy/Career at the time when the employee is receiving a retention incentive based on the terms of an applicable service agreement, or when the employee is receiving a retention incentive without a service agreement as long as the agency finds the payment is warranted under 5 CFR 575.311(f).

However, agencies will continue to have the discretion to use other compensation flexibilities to assist in recruiting and retaining Schedule Policy/Career employees. This includes the GS superior qualifications and special needs pay setting authority to set pay above step 1 for employees newly appointed or reappointed after a 90-day break in service (5 U.S.C. 5333 and 5 CFR 531.212). Other examples include the GS maximum payable rate rule, which allows agencies to set GS pay based on a higher rate of pay the employee previously received in another Federal job (5 CFR 531.221–223); critical position pay, which allows OPM (in consultation with OMB) to provide an agency authority to fix the rate of basic pay for one or more

positions requiring an extremely high level of expertise at a higher rate than would otherwise be payable, up to level I of the Executive Schedule or higher with the approval of the President (5 U.S.C. 5377 and 5 CFR part 535); and authority to approve creditable service for annual leave accrual rates based on non-Federal civil service work and unformed service experience (5 U.S.C. 6303(e) and 5 CFR 630.205).

Schedule Policy/Career employees will also be eligible for awards under 5 U.S.C. chapter 45 to the extent permitted under Administration policies. In the past, some Administrations have barred awards for noncareer political appointees, but this was done via policy, not because of a statutory requirement. An Administration could establish a policy barring awards for noncareer political appointees (e.g., Schedule C employees, noncareer appointees in the SES, and Presidential appointees in the Executive Schedule) while allowing awards for Schedule Policy/Career employees.

Schedule Policy/Career employees who hold an appointment without a time limitation will be considered to hold a qualifying appointment that conveys potential eligibility for severance pay, subject to meeting all other eligibility requirements. OPM regulations provide that a nonqualifying appointment for severance pay eligibility includes a Schedule C appointment, a noncareer SES appointment, or “an equivalent appointment made for similar purposes.” A Schedule Policy/Career appointment is not such an equivalent appointment since its purpose is to provide for career employment.

iv. Other Legal and Policy Arguments Are Not Persuasive or Relevant

Several commenters raised a variety of arguments challenging the legality of the proposed rule. OPM will address these arguments below.

The Supreme Court’s Decision in *Elrod* Is Not Instructive

Commenter 8019 expressed concern with the legality of Schedule Policy/Career with respect to a set of legal precedents which, in that commenter’s opinion, render Schedule Policy/Career unlawful. OPM has carefully considered and rejected each of these arguments. As Commenter 8019 notes, *Elrod v. Burns*⁴⁵⁶ began a line of Supreme Court precedents which dealt with the legality of political patronage-based firing practices. *Elrod* concerned a practice in the Cook County, Illinois sheriff’s

⁴⁵⁶ 427 U.S. 347 (1976).

department of, upon a change in administration, replacing roughly half of the employees hired by the outgoing party with new employees of the incoming party.⁴⁵⁷ The outgoing employees were terminated as a matter of course simply because they lacked adequate sponsorship by the incoming party. The issue in that case was whether this practice violated the First Amendment rights of terminated employees, even though those employees had no specific tenure protections under any statute or regulation. A majority of the *Elrod* court held that purely partisan dismissals were an intrusion on employees' First Amendment freedoms of assembly and expression; it further held that this intrusion could not be justified for reason of enhancing the efficiency of the civil service, nor for reason of ensuring loyalty to the political administration.⁴⁵⁸

Commenter 8019 asserts that the arguments made for allowing the at-will dismissal of the *Elrod* plaintiffs are identical to the arguments made on behalf of Schedule Policy/Career today. It is true that the *Elrod* court considered and rejected three arguments against tenure protection—one argument based on bureaucratic efficiency, one based on bureaucratic responsiveness to politics, and one based on the preservation of the role of parties and partisan politics in the democratic process more generally, and that the first two of these arguments bear at least superficial resemblance to arguments made in OPM's proposal rule. However, the arguments arose in a radically different context, and the difference in context colors their legal force. In *Elrod*, it was understood that appointments and dismissals to plaintiffs' positions were made on the basis of partisan politics alone, and the core legal issue was whether the democracy and efficiency arguments made in favor of patronage dismissal outweighed the employees' First Amendment rights, which the plurality believed to be seriously imperiled by the sheriff department's practice. The plurality rejected out-of-hand any separation of powers concerns that might otherwise be implicated, because it viewed the First Amendment as the core issue.⁴⁵⁹ The plurality reasoned

that because, to hold their jobs, plaintiffs must have "pledge[d] their political allegiance to the Democratic Party, work for the election of other candidates of the Democratic Party, contribute a portion of their wages to the Party, or obtain the sponsorship of a member of the Party. . . ,"⁴⁶⁰ they had to choose between their First Amendment rights and their government jobs. The Court thus found that something like "coerced belief" was thus a condition of plaintiffs' continued employment.⁴⁶¹

This framing in *Elrod* created a hostile stance toward arguments for at-will employment as part of the procedural posture of the case, such that the arguments had to meet an overwhelming threshold of persuasiveness to be accepted by the Court.⁴⁶² Still, even in this context, the Court suggested that it was merely "not persuaded" by arguments for at-will employment or found them "not without force, but . . . inadequate . . . to validate patronage wholesale."⁴⁶³ In other words, the Supreme Court found that arguments for at-will employment had merit, but they did not have the kind of merit which could override serious impediments to the exercise of constitutional rights as implicated by pure patronage firings.

Contrast this with the present situation. Both E.O. 14171 and the present rule make clear that those encumbering Schedule Policy/Career positions "are neither expected nor required to personally support the President or his policies."⁴⁶⁴ They merely must "faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President."⁴⁶⁵ Like most private sector employees, and many state government employees, Schedule Policy/Career employees will be terminable for poor performance or insubordination but are protected from purely partisan

dismissals, completely sidestepping the core issue in *Elrod*. With both the E.O. and the present rule, then, the compelled speech issue which framed the *Elrod* decision is not present.

As Commenter 8019 suggests, *Elrod*'s logic was extended to "confidential" employees by *Branti v. Finkel*,⁴⁶⁶ which dealt with assistant county public defenders. In that case, the trial court specifically held, and the Supreme Court accepted, that the plaintiffs "had been selected for termination solely because they were Republicans."⁴⁶⁷ At issue, again, was solely where to draw the line between employees who can be dismissed because of their party affiliations and those who cannot. The Court held that "whatever policymaking occurs in the public defender's office must relate to the needs of individual clients and not to any partisan political interests. Similarly, although an assistant is bound to obtain access to confidential information arising out of various attorney-client relationships, that information has no bearing whatsoever on partisan political concerns."⁴⁶⁸ *Branti*, thus, also has no real applicability to Schedule Policy/Career. Not only was the case about patronage firing, but it also dealt with employees who, the Court held, had no information or duties which related to partisan political concerns of the sort implicated by those career positions which are directly related to advancing the policy priorities of the President. For the same reason, Commenter 8019's references to *Wieman v. Updegraff*,⁴⁶⁹ *In Cafeteria Workers v. McElroy*,⁴⁷⁰ and *Keyishian v. Board of Regents*,⁴⁷¹ which concern the extent to which employees can be disciplined by the government for membership in a subversive political organization, are inapplicable.

Somewhat recognizing the distinction between *Elrod* and the present situation, Commenter 8019 suggests that the language protecting Schedule Policy/Career employees from patronage-based dismissal is pretextual, citing several supposed occurrences of partisan firing since President Trump's second inauguration. Commenter's examples, however, are primarily cases where employees were dismissed based upon their conduct in office, not their personal political views. Such conduct-based dismissals do not implicate the First Amendment. Commenter's sole example of alleged screening based on

impermissible under the Constitution. Where there is no power, there can be no impairment of power.").

⁴⁶⁰ *Id.* at 355. See also *id.* at 357 (referring to "Patronage . . . to the extent it compels or restrains belief or association.").

⁴⁶¹ *Id.*

⁴⁶² *Id.* at 362 ("It is firmly established that a significant impairment of First Amendment rights must survive exacting scrutiny. . . . The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest.").

⁴⁶³ *Id.* at 364, 367.

⁴⁶⁴ 90 FR 8626; 90 FR 17208 ("Contrary to fears of a return to the spoils system, the President expressly forbid political loyalty tests for Policy/Career employees.").

⁴⁶⁵ 90 FR 8626.

⁴⁶⁶ 445 U.S. 507 (1980).

⁴⁶⁷ *Id.* at 510.

⁴⁶⁸ *Id.* at 519.

⁴⁶⁹ 344 U.S. 183 (1952).

⁴⁷⁰ 367 U.S. 886 (1961).

⁴⁷¹ 385 U.S. 589 (1967).

⁴⁵⁷ The other half of employees were "merit" employees with some form of tenure protection.

⁴⁵⁸ Only three justices joined the plurality opinion. Two members of the majority would have ruled on narrower grounds.

⁴⁵⁹ See 427 U.S. at 352–53 (rejecting the applicability of *Myers v. United States* on the ground that "[T]here can be no impairment of executive power, whether on the state or federal level, where actions pursuant to that power are

political views was the administration ending the details of career employees temporarily assigned to the White House National Security Council and returning them to their home agencies. The employees were not fired and, even if they had been, White House policy council positions with national security responsibilities are among the most sensitive policymaking positions in government. Terminations from such positions, much less reassignments from them, raise zero First Amendment concerns. Accordingly, there is no basis on the record to suggest that OPM's current rulemaking is a pretext for mass firings of public servants.

The Final Rule Is Consistent With the CSRA and DPAA

Some commenters asserted that Schedule Policy/Career dismissal procedures violate the Lloyd-La Follette Act, requiring certain procedural notice before removal of an employee can be effected. Although the Lloyd-La Follette Act was superseded by the CSRA, the CSRA contains procedural requirements applying to adverse actions and also generally provides for appeals of adverse actions, including dismissals, to the MSPB. In a similar fashion, the DPAA extended the rights of non-preference eligibles to receive pre-termination notice, and also to appeal adverse decisions to the MSPB. As discussed in the proposed rule and above, both the CSRA and the DPAA authorize OPM and the President to exempt employees in policy-influencing positions from access to chapter 75 adverse action procedures and appeals. Thus, this rule maintains harmony with both the CSRA and the Due Process Amendments.

The Final Rule Does Not Promote Hatch Act Violations

Commenters 3778, 4652, 13159, 30292, and others, raise concerns that the establishment of Schedule Policy/Career will increase Hatch Act violations or vitiate the law in its entirety by obscuring the distinction between political and career employees. All Federal employees in the executive branch, with the exception of the President and Vice-President, are subject to the requirements of the Hatch Act concerning restrictions on political activity. Certain employees are subject to further restrictions, depending on their employing agency or the roles/functions they perform. The Hatch Act makes no distinction between career and political appointees in terms of application, except for appointees appointed by the President after Senate confirmation, and certain employees

paid by an appropriation covering the Executive Office of the President. Even those exceptions primarily relate to enforcement of the Hatch Act rather than covering the substance of the restrictions on political activity. These commenters misconstrue the Hatch Act as allowing political appointees to engage in partisan activity while prohibiting career employees from engaging in the same activity. In fact, all appointed executive branch employees must abide by the Hatch Act restrictions made applicable to their agency or their particular position. Accordingly, OPM does not believe that Hatch Act concerns attach to this rule.

No Impacts to Retirement Benefits

One commenter raised concerns that placement in Schedule Policy/Career will impact retirement benefits. Retirement benefits are not impacted as a result of this rulemaking. If an employee is terminated—with or without cause—retirement eligibility is determined based on their age and years of Federal service. Eligibility for a voluntary or involuntary immediate retirement (one that begins within 30 days of separation) would permit the former employee to retain their Federal Employees Health Benefits (FEHB) health insurance benefits provided that they meet the eligibility requirements for continued coverage (*i.e.*, the employee has been enrolled in the FEHB program from their first opportunity to enroll or for the full five years of service immediately preceding retirement). If an employee is terminated and the only retirement eligibility is for a deferred annuity, the FEHB insurance terminates and cannot be reinstated in retirement. For employees terminated for cause, they would not be eligible for a discontinued service retirement or voluntary early retirement authority (*i.e.*, VERA). They may be eligible for voluntary immediate retirement options (*e.g.*, Minimum Retirement Age + 10) that may allow them to keep or, after postponing their retirement, reinstate their FEHB health insurance benefits prospectively, provided that the employee meets the eligibility requirements to retain FEHB coverage into retirement.

Other Concerns

A few commenters argued that this rulemaking violates 38 U.S.C. 4214 by denying veterans certain hiring and retention preferences. Nothing in this rule bears upon or affects veterans preference in employment as provided for at 38 U.S.C. 4214.

Some commenters argued that this rulemaking violates 5 U.S.C. 609(b)

because OPM failed to convene a small business advocacy review panel before issuing the proposed rule. OPM disagrees. This rule has no impact on any small business. It affects only current or prospective Federal employees.

A few commenters argued that this rulemaking fails to provide information required under Section 515 of the Information Quality Act, Public Law 106–554. Relatedly, commenters (14463, 16846, 30317, and 30433) further allege that OPM did not verify the information presented by the sources. On the contrary, OPM used publicly available sources, including data maintained in OPM's own FedScope database. OPM believes that the data sets relied upon represent the best available information concerning the size, scope, and duties of Federal employees, as well as data concerning both disciplinary and performance-based actions.

One commenter argued that this rulemaking is incompatible with the Rehabilitation Act, 29 U.S.C. 791, because it fails to account for disproportionate impacts on Federal employees with disabilities. Despite this assertion, the commenter does not present any evidence that this rulemaking would disproportionately impact Federal employees with disabilities. There is nothing in the rule that affects the hiring of individuals with disabilities into Federal employment. The hiring of such individuals will continue to be governed by applicable law and regulation. To the extent that the commenter argues that this rulemaking violates the Rehabilitation Act under a disparate-impact theory of liability, the President has made clear that such a theory is contrary to the Constitution.⁴⁷²

A few commenters argued that the rulemaking is incompatible with the holding in *Bowen v. Georgetown University Hospital*.⁴⁷³ In *Bowen*, the Supreme Court held that an agency's rulemaking is not retroactive unless Congress expressly authorized retroactivity. This rule does not contain any regulatory provisions that are retroactive in nature. *Georgetown University* explicitly addressed a statutory scheme which the Court determined did not provide for retroactive regulatory coverage, although the agency had, in fact, invoked coverage on a retroactive basis. There is nothing in this rule that provides for retroactive reclassification

⁴⁷² E.O. 14281, "Restoring Equality of Opportunity and Meritocracy," 90 FR 17537 (April 23, 2025).

⁴⁷³ 488 U.S. 204 (1988).

of positions under Schedule Policy/Career, especially inasmuch as the rule only applies prospectively.

Another commenter argues that this rulemaking runs afoul of the Supreme Court's holding in *Service v. Dulles*.⁴⁷⁴ In *Service*, the Supreme Court held that the dismissal of a Foreign Service Officer by the Secretary of State was invalid because the Secretary had violated his own internal rules regarding a dismissal which was based on a security violation. The Court found that having promulgated the rules the Secretary was bound by them. Schedule Policy/Career does not implicate the Court's decision in *Service* because Schedule Policy/Career employees will serve on an "at will" basis, and dismissals will not need to be based on "for cause" reasoning.

Lastly, OPM notes that some employees reassigned or hired into Schedule Policy/Career positions may be subject to public financial disclosure reporting under regulations prescribed by the Office of Government Ethics (OGE).⁴⁷⁵ Under 5 CFR 2634.202(e), public filers subject to public financial disclosure reporting include employees whose positions are excepted from the competitive service due to their positions being of a confidential or policy-making character. While no commenters raised concerns over the application or impacts associated with the application of these regulations and this final rule, OPM will work with OGE to provide guidance to agencies on ensuring that they appropriately identify employees subject to these disclosure requirements.

E. Reliance Interests

As discussed in the proposed rule, OPM has concluded that prior expectations or reliance interests in maintaining chapters 43 and 75 procedures as articulated in the April 2024 rulemaking are outweighed by the policy benefits of the current rulemaking. Several commenters, including but not limited to Commenters 1550, 16323, 18739, and 35517 argued the rule undermines the American public's reliance on a nonpartisan civil service in many aspects of their lives, including, as Commenter 35517 asserts, "help[ing] families in the wake of hurricanes and deadly fires, facilitat[ing] access to lifesaving payments like Social Security and unemployment insurance, and protect[ing] national security."

These concerns are unfounded and are untethered to the substance of the

rule. The rule solely impacts those who occupy policy-influencing positions. Few line employees responsible for executing service delivery meet these criteria. Further, as discussed extensively above, Schedule Policy/Career positions will remain nonpartisan career positions filled and vacated without regard to employees' personal political affiliation. Those such as Commenter 35517 who raise concerns that this rule will adversely impact the public by undermining its ability to rely on service delivery are seemingly arguing against an imaginary two-step, that reclassifying employees into Schedule Policy/Career will *ipso facto* result in a reduction in overall headcount amongst Federal employees. Reduction in headcount is an issue unrelated to this rule and moreover, employees who faithfully perform their jobs to the best of their ability have little to fear from Schedule Policy/Career. The order expressly prohibits discrimination based on political affiliation, and agencies have strong incentives not to dismiss employees who are competently performing their assigned duties. Doing so would undermine their ability to complete their mission. Employees should be assumed to understand their performance expectations when they take their jobs. Merit Principle Four requires employees to maintain high standards of integrity and conduct, and Merit Principle Six directs agencies to separate employees who do not improve inadequate performance. The employees at risk of dismissal are those who fail to perform adequately or who engage in serious misconduct such as corruption or injecting their personal politics into the performance of their official duties. Congress has made it clear that the civil service benefits from such employees' removal. In such instances, an employee's actual reliance interest is the ability to violate merit principles with little risk of removal—which is not a legitimate reliance interest.

Other commenters, such as 10344, 21721, 30863, and 34821 assert that Federal employees who have invested in agency-specific expertise on the premise they would possess adverse action and procedural protection rights, *i.e.*, job security, have developed settled expectations and reliance interests in those rights. Reclassifying such employees as Schedule Policy/Career, when appropriate, does in fact upset those reliance interests.

However, OPM believes that the prejudice to such employee reliance interests is small and does not believe the thousands of civil servants who perform their duties with integrity and

excellence will leave the Federal service for lack of protections. Regardless, removal restrictions provide little benefit to the many employees who perform high quality work and are at little risk of dismissal. As previously discussed, and as Commenter 32359 noted, the Congressional Budget Office estimates that most Federal employees place a relatively low value on access to adverse action appeals. OPM believes this is likely because fully successful employees know they have little need of them.

Even if the prejudice to employee reliance interests were not small, the policy benefits to the executive branch would outweigh them. Poor performing employees who engage in misconduct, corruption, or inject partisanship into the performance of their official duties present a serious concern that undermines the efficiency and integrity of the civil service writ large. The corruption and misconduct at the FDIC demonstrate this clearly. Democracy depends on a nonpartisan civil service in which career employees effectively and faithfully implement the law and the policies of the elected President to the best of their ability. In our system of governance, any reliance interests on so-called "job security" should be subordinate to the necessity of a competent, ethical, and democratically accountable civil service.

Many commenters argued that the proposed rule will create a "chilling effect" on Schedule Policy/Career employees in the performance of their duties, particularly in offering candid advice to agency leadership. Commenters expressed concern that employees would choose not to provide this advice out of fear that doing so would lead to removal if political leadership disagreed. In the April 2024 rule, OPM made a similar assertion that Schedule F "would chill employees broadly and interfere with their willingness to present objective analyses and frank views in carrying out their duties, thus diminishing the reasoned consideration of policy options."⁴⁷⁶

OPM understands these commenters' concern but respectfully disagrees that the rule will create a chilling effect for the following reasons. First, the purpose of this rule is to reinforce the merit-based, nonpartisan character of the civil service and improve the democratic responsiveness of the Federal Government. The rule clarifies that Schedule Policy/Employees must be able to serve the public and carry out the policies of the elected Administration and agency heads

⁴⁷⁴ 354 U.S. 363 (1957).

⁴⁷⁵ See 5 CFR part 2634, subpart B.

⁴⁷⁶ 89 FR at 25037.

without regard to their personal political beliefs. Nothing in the rule authorizes or encourages discipline or removal of employees based on the content of their good-faith professional advice.

Second, the rule expressly recognizes that robust, candid internal deliberation and professional disagreement are an essential part of effective government decision-making. As the proposed rule explains, policy-influencing Federal employees are not expected to simply say yes to what they are told. Rather, they “provide their frank and fearless advice to agency leadership.”⁴⁷⁷ This includes advice that challenges assumptions, identifies legal or operational risks, or proposes alternatives, so long as they ultimately implement the lawful decisions of agency leadership. This final rule is directed at ensuring faithful execution of leadership’s final, lawful decisions, not at suppressing the process of reaching those decisions.

Third, commenters’ fear that the rule creates a chilling-effect is speculative and is already addressed by longstanding principles of civil service law that predate this rule. All Federal employees swear an oath to the Constitution which requires them to “faithfully discharge the duties of the office” that they hold.⁴⁷⁸ In fulfilling their oaths, all Federal employees are expected to provide their best professional judgment and implement lawful policy decisions once made, even where they personally disagree. The rule does not alter that balance. It neither expands agency authority to discipline employees for expressing dissenting professional views in appropriate channels, nor eliminates protections taken against Schedule Policy/Career employees based on PPPs.⁴⁷⁹ The President took proactive steps to guard against arbitrary actions prohibited under 5 U.S.C. 2302(b) by requiring agencies to establish through internal agency policies protections for Schedule Policy/Career employees from PPPs including whistleblower reprisal. Data from the most recent FEVS shows that 72% of Federal employees report positively that they can disclose suspected violations of any law, rule, or regulation without fear of reprisal.⁴⁸⁰ In

a 2011 MSPB report, employees are more willing to “blow the whistle” when the wrongdoer is a political appointee compared to their supervisor or manager.⁴⁸¹

Fourth, OPM takes note of empirical research surveying state personnel directors in six states with fully or partially at-will workforces: Colorado, Florida, Georgia, Kansas, Missouri, and South Carolina. This research shows only a small minority of state directors believe at-will employment discourages government employees from either whistleblowing or freely voicing objectives to management directives, while an absolute majority affirmatively believe it does not have these effects.⁴⁸² OPM credits this research and takes it as empirical evidence that at-will employment will not significantly deter whistleblowing or create a chilling effect in the Federal workforce. OPM also notes that commenters failed to provide concrete evidence or examples of a chilling effect in the many states, for example, that currently operate their workforces fully or partially at-will.⁴⁸³

Fifth, the rule is designed to reduce the risk of chilled speech by clearly delineating the boundary between protected professional disagreement and unprotected refusal to carry out lawful instructions. By expressly prohibiting

agencies from taking personnel actions against Schedule Policy/Career employees based on political affiliation and requiring political loyalty pledges, and by reaffirming that disagreement with policy—without more—is not a lawful basis for removal, the rule provides employees with clearer guidance and greater assurance that they may offer forthright advice without jeopardizing their careers. Consequently, between the proactive steps taken by the President in E.O. 13957 to extend PPP protections to Schedule Policy/Career positions and these data points, the so-called chilling effect is unlikely to emerge from this rule.

Commenter 27705 and others argue that regulated entities and private sector companies engaging with the Federal Government rely on stability amongst interpretations of law and information analysis that will dissipate with the implementation of Schedule Policy/Career. These concerns presuppose similar imagined mass removals as discussed above, as well as see-saw changes in interpretation from administration to administration. The Supreme Court’s recent ruling in *Loper Bright Enterprises v. Raimondo*,⁴⁸⁴ which came after OPM’s prior rulemaking, should also minimize concerns of such “whipsaw changes” in Federal regulations. Courts and litigants now look to the best interpretation of a statute rather than allowing agencies to construe ambiguous terms. The former doctrine of *Chevron* deference allowed agency leadership to read its policy preferences into statutory ambiguities, which could produce drastic policy changes with each new presidential administration. The end of *Chevron* deference gives the executive branch much less discretion to unilaterally change course without authorization from Congress. This will provide regulated entities with greater regulatory certainty, minimizing the potential for “turmoil.”

Finally, the President has determined that the harms discussed above and in the relevant executive orders outweigh any reliance interests in the status quo. The President is the individual statutorily and constitutionally vested with authority to make that determination. Even if OPM were not independently convinced of that fact—and it is—OPM would credit a Presidential determination weighing the costs and benefits of prospective changes to the civil service rules and regulations.

governmentwide-all-levels-all-index-all-items-report.xlsx.

⁴⁸¹ MSPB, *Blowing the Whistle: Barriers to Federal Employees Making Disclosures* at 37–38 (Nov. 2011), https://www.mspb.gov/studies/studies/Blowing_The_Whistle_Barriers_to_Federal_Employees_Making_Disclosures_662503.pdf.

⁴⁸² J. Kim & J. Edward Kellough, *At-Will Employment in the States, Examining the Perceptions of Agency Personnel Directors*, 34(2) Rev. of Pub. Pers. Admin 218–236 (2014), Table 2.

⁴⁸³ Comment 26673, submitted by a coalition of Attorneys General affiliated with the Democratic party, draws OPM’s attention to a study published in 2006 examining the effect of at-will employment in Florida state government, shortly after Florida passed legislation making most managers at-will employees. This study shows that some managers believed the reform had negative effects on employee’s willingness to speak out, while others disagreed. This study does not provide any concrete examples of a chilling effect, nor does it attempt to quantify the extent to which managers believe it had a chilling effect. OPM takes it to show that shortly after the reform took effect Florida managers had equivocal perceptions of whether at-will employment creates a chilling effect. OPM finds Kim and Kellough’s (2014) analysis more predictive of the likely effect of at-will employment in the Federal government. Their more recent study has significantly larger sample size across six states, rather than an analysis of a single state shortly after reforms were effectuated. Their study also empirically assesses the extent to which personnel directors perceive a chilling effect and finds that only about one-in-seven do so. This study thus does make empirical estimates, has a smaller margin of error, and is more likely to reflect the effects of at-will employment generally rather than idiosyncrasies affecting implementation in a single state.

⁴⁷⁷ 90 FR at 17208–09.

⁴⁷⁸ 5 U.S.C. 3331.

⁴⁷⁹ See Section 6 of E.O. 13957.

⁴⁸⁰ U.S. Off. of Pers. Mgmt., *Federal Employee Viewpoint Survey: 2024 Governmentwide All Levels-All Index-All Items Reports* at Q8, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-all-levels-all-index-all-items-reports/2024/2024->

⁴⁸⁴ 603 U.S. 369 (2024).

At least one commenter, Commenter 1785, expressed concern that this rulemaking may be invalid under the authority of *FCC v. Fox Television Stations, Inc.*⁴⁸⁵ *Fox* held, following the Court's earlier opinion in *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*,⁴⁸⁶ that while there is generally not a higher standard for a change in agency policy under APA Section 706(2)(a) arbitrary and capricious review (as compared to the announcement of a completely new policy), there are some relevant differences when the agency changes course. First, as discussed above, when an agency announces a change in policy through notice-and-comment rulemaking, a minimum reasoned explanation must show awareness that there exists a change in policy; it cannot "depart from a prior policy *sub silentio* or simply disregard rules that are still on the books."⁴⁸⁷ The agency "need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates."⁴⁸⁸ In *Fox*, the Supreme Court suggested two circumstances in which the agency might have a higher evidentiary burden when changing course, as opposed to when simply announcing a new policy: "when, for example, its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account."⁴⁸⁹

Commenter 1785 raises the issue that, without justifying its failure to address reliance interests, the present rulemaking may be arbitrary and capricious. The commenter does so without elaborating.⁴⁹⁰ It is thus unclear what reliance interests the commenter has exactly in mind. However, case law decided after the *Fox* decision suggests that the reliance interests at issue must generally be quite strong to outweigh an agency's authority to undertake an otherwise valid change of course for

purposes of APA arbitrary and capricious review. For example, in *Encino Motorcars, LLC v. Navarro*,⁴⁹¹ the Department of Labor, in a 2011 rulemaking, reversed course from regulations dating to 1978 which held that service advisors at automotive dealerships are exempt from FLSA overtime pay requirements. The Court held that the heightened threshold based on the reliance interests discussed in *Fox* was not met. The Court recognized that compensation packages for auto dealership workers had been negotiated for decades with the prior interpretation of the FLSA as a background assumption, so that the change in policy might require an industrywide rethinking of compensation schemes for covered employees. The heightened *Fox* threshold was not met, because, in the Court's view, the agency said almost nothing to justify its complete about-face on the issue.⁴⁹²

It is unclear that the agency's scant attempt to justify its new policy in *Encino Motorcars* would have met even the usual, highly deferential standard for arbitrary and capricious review under the APA, given the almost complete absence of justification for the new policy on the record. The rulemaking thus might be compared to *United States Telecom Ass'n v. Federal Communications Commission*.⁴⁹³ There, the FCC proposed to change its classification of broadband internet services from an information service to a telecommunications service in furtherance of net neutrality. Industry argued that their infrastructure investment was sufficiently based on the existing regulatory regime that, under the authority of *Fox*, the FCC should not be allowed to change course. The court disagreed. In its rulemaking, the court explained that the agency had specifically taken the industry's reliance interests into account and taken action despite those interests; the FCC had determined that the burdens tied to choice of regulatory regime were a comparatively minor driver of industry investment, compared to demand and competition, such that the industry's reliance interests were not sufficient to override the agency policy.⁴⁹⁴

Nothing like the industry-wide reliance interests at issue in *Encino Motorcars* are present here. It is debatable whether the industry reliance

interests overridden in *U.S. Telecom Ass'n* are present for that matter. Whatever reliance interests career Federal employees occupying policy-influencing roles may possess, such as reliance in the availability of chapter 75 and chapter 43 proceedings despite their reclassification into the excepted service, would seem to be a comparatively minor driver of the decision to, for example, accept the role. Nothing implicated in Schedule Policy/Career has anything like the economic impact of the regulatory scheme at issue in *Encino Motorcars*, as we are dealing with a very small proportion of the Federal workforce compared to all employees in a given industry. Further, it is unlikely that the availability of specific forms of review over termination proceedings is as important a driver of individual employment decisions for Federal workers as, for example, salary, position in the organization, occupational autonomy, and prestige.⁴⁹⁵ OPM also notes again that this rulemaking deals with a small proportion of the Federal workforce—only an estimated 2% of Federal workers, will likely be moved into Schedule Policy/Career—and with the availability of procedural protections which are far less central to employment decisions than the pay provisions at issue in *Encino Motorcars*.

Even if this were not the case, and Schedule Policy/Career applied more broadly and had great economic significance to employees, the President has determined and OPM concurs that the benefits of strengthening performance management and democratic accountability in the Federal workforce would outweigh these concerns.⁴⁹⁶

VI. Regulatory Analysis

A. Statement of Need

The President has determined, and OPM independently agrees, that

⁴⁹⁵ OPM views the Congressional Budget Office's analysis that three-quarters of Federal employees value the availability of adverse action procedures at less than five percent of their salary as indicating it plays a relatively small role in the overall Federal compensation package.

⁴⁹⁶ And, as Justice Ginsburg wrote in her *Encino Motorcars* concurrence, "[R]eliance does not overwhelm good reasons for a policy change. Even if the Department's changed position would necessitate systemic, significant changes to the dealerships' compensation arrangements, the Department would not be disarmed from determining that the benefits of overtime coverage outweigh those costs. 'If the action rests upon an exercise of judgment in an area which Congress has entrusted to the agency, of course it must not be set aside because the reviewing court might have made a different determination were it empowered to do so.'" 579 U.S. at 226–27 (quoting *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (cleaned up)).

⁴⁸⁵ 556 U.S. 502 (2009).

⁴⁸⁶ 463 U.S. 29 (1983).

⁴⁸⁷ 556 U.S. at 515.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ As a threshold matter, an agency need not consider reliance interests which are merely hinted at in passing, without adequate elaboration. See *Mingo Logan Coal Co. v. Env't Prot. Agency*, 829 F.3d 710, 722 (D.C. Cir. 2016) ("An agency cannot be faulted for failing to discuss at length matters only cursorily raised before it.").

⁴⁹¹ 579 U.S. 211 (2016).

⁴⁹² "It did not analyze or explain why the statute should be interpreted [as the new policy required]." *Id.* at 224.

⁴⁹³ 825 F.3d 674 (D.C. Cir. 2016).

⁴⁹⁴ See also *Solar Energy Indus. Ass'n v. Federal Energy Regul. Comm'n*, 80 F.4th 956 (9th Cir. 2023).

implementing E.O. 14171 and effectuating Schedule Policy/Career is necessary to improve executive branch operations. This rule will assist in carrying out that policy. As discussed throughout the preamble, adverse action procedures and appeals make it prohibitively difficult for agencies to remove employees for all but the worst performance and conduct. This has led to significant problems with serious misconduct and corruption going unaddressed in contravention of Merit Principle Four, agencies failing to separate persistent poor performers in violation of Merit Principle Six, and many employees injecting partisanship into their duties and seeking to advance their personal political agendas while on the job. These problems are particularly acute in policy-influencing positions. Moving policy-influencing positions into Schedule Policy/Career will remove procedural impediments to holding career officials accountable for their performance and conduct, while retaining their status as career employees appointed based on merit.

Further, the principal provisions of the April 2024 final rule have either been rendered inoperative or OPM has concluded they exceed its statutory authority. OPM believes it is inappropriate to maintain obsolete or unlawful regulatory provisions.

B. Regulatory Alternatives

An alternative to this rulemaking is to not issue a regulation while increasing training for managers and supervisors in how to use the procedures under chapters 43 and 75. OPM has concluded this is not a viable option. Prior attempts to address the management challenges created by adverse action procedures and appeals through better use of the existing framework have failed. MSPB research shows that only two-fifths of Federal supervisors are confident they could remove an employee for serious misconduct, and just one quarter are confident they could remove an employee for poor performance.⁴⁹⁷ Neither OPM nor the President believe that additional training or greater management support would be sufficient to effectively address agencies' difficulty in holding employees accountable, when necessary, for underperformance or misconduct.

Furthermore, OPM is statutorily tasked with executing, administering, and enforcing the civil service rules and regulations of the President.⁴⁹⁸ E.O.

13957 amended the civil service rules to create Schedule Policy/Career. Declining to help the President execute this directive would be a dereliction of OPM's statutory duty.

Relatedly, E.O. 14171 rendered several provisions of the 2024 final rule inoperative and without effect. Subpart F of part 302 and § 210.102(b)(3) and (b)(4) of title 5, Code of Federal Regulations, no longer reflect the operative legal standards governing the Federal workforce. As OPM explained in the 2023 notice of proposed rulemaking for the prior rule, retaining out-of-date information in regulations can confuse agencies, managers, and employees and produce unintended outcomes. Human resources specialists or managers may inadvertently rely on these particular regulations.⁴⁹⁹

For example, employees moved into Schedule Policy/Career who review OPM's § 210.102 definitions could be given the mistaken impression that they have been converted into political appointees because those regulations state policy-influencing positions are only political appointments. However, E.O. 13957, as amended, provides that employees in Schedule Policy/Career remain career appointees who can expect to keep their jobs across changes of administration as long as they perform effectively. OPM also considered implementing E.O. 13957, as amended, but permitting incumbent employees who are reclassified or moved into Schedule Policy/Career to retain adverse action procedures and appeals. This would functionally make Schedule Policy/Career effective only for new hires, not existing employees, and would entirely sidestep concerns about impairing employee property interests in their jobs. OPM nonetheless concluded that this approach would not satisfy policy or legal concerns.

As a matter of policy, applying Schedule Policy/Career prospectively would negate most of the benefits of the rule during this presidential administration. The heightened accountability would apply only to new employees, who are a minority of the policy-influencing workforce. Most employees in policy-influencing positions would retain the adverse action procedures and appeals that substantially reduce their accountability to the President. Moreover, the most senior and experienced policy-influencing employees would remain exempt. These are the employees most important to cover under the rule, as poor performance or misconduct in the course of their duties has the largest

impact on agency operations. E.O. 13957, as amended, also requires agencies to include existing positions in their reviews.⁵⁰⁰ It would frustrate the purposes of the order to allow employees moved into Schedule Policy/Career to remain covered by chapter 75 procedures.

OPM also considered, based off the suggestion of Commenter 13578, implementing E.O. 13957, as amended, but offering individuals occupying positions converted to Schedule Policy/Career Voluntary Early Retirement (VERA) or Voluntary Separation Incentives (VSIP). VERA/VSIP are authorized in situations where an agency is undergoing substantial restructuring, reshaping, downsizing, transfer of function, or organization,⁵⁰¹ or where employees are in surplus positions or have skills that are no longer needed in the workforce.⁵⁰² Neither of these situations are applicable here, where employees are occupying positions that are *converted* to Schedule Policy/Career—not eliminated. As such, this suggested alternative is not viable. Such VERA or VSIP offers could also foster the sort of retention problems that other commenters warned against. OPM believes employees in positions transferred to Schedule Policy/Career are doing important work and OPM does not want to encourage their departure.

As a matter of law, OPM has, as previously discussed, concluded that the 2024 rulemaking's additions to part 752, subpart D exceeded its statutory authority. Section 7511(b)(2) of 5 U.S.C. categorically excludes from chapter 75 procedures excepted service employees in policy-influencing positions. As explained in the proposed rule, nothing in the CSRA or elsewhere in title 5 provides for incumbents in such positions to retain adverse action procedures and appeals. Congress drafted section 7511(b)(2) to categorically apply to all excepted service positions that an appropriate authority has determined are policy-influencing. Unlike other provisions in section 7511(b), the (b)(2) exception for policy-influencing positions applies without regard to the personal status or history of the employee encumbering the position.⁵⁰³ OPM cannot by regulation extend adverse action procedures to positions statutorily excluded from coverage. Even if OPM

⁴⁹⁷ E.O. 13957, sec. 5(b).

⁵⁰¹ 5 U.S.C. 8336(d)(2)(D), 8414(b)(1)(B).

⁵⁰² See 5 U.S.C. 3521–3523; 5 CFR 576.101.

⁵⁰³ For example, 5 U.S.C. 7511(b)(4) excludes reemployed annuitants from chapter 75's coverage.

⁴⁹⁷ Remediating Unacceptable Employee Performance at 6, 15.

⁴⁹⁸ 5 U.S.C. 1103(a)(5).

⁴⁹⁹ 88 FR 63879.

wanted to extend adverse action procedures and appeals to employees moved into Schedule Policy/Career, it lacks statutory authority to do so. Retaining the subpart D amendments that purport to provide such adverse action procedures is thus not legally viable.

C. Impact

OPM is making these revisions to align the civil service regulations with operative legal requirements in E.O. 13957, as amended. OPM believes that E.O. 14171 rendered 5 CFR 210.102(b)(3) and (b)(4)'s definition of the policy-influencing terms inoperative, as well as 5 CFR part 302, subpart F. To the extent these rules as finalized simply comport OPM regulations to existing law, OPM believes that they will have a negligible impact on agencies. The main change that finalizing OPM's proposed regulations will cause is reversing the April 2024 final rule's amendments to part 752, subpart D. Under OPM's amended regulations, employees reclassified or moved into Schedule Policy/Career positions will no longer remain covered by chapter 43 and 75 procedures or MSPB appeals. As discussed above and in the proposed rule, OPM now believes that the changes made by the 2024 final rule exceeded its statutory authority and thus were unenforceable in any event. To the extent policy-influencing employees who are engaged in misconduct or performing poorly respond to this heightened accountability by improving their performance and conduct, the rule will generally improve agency operations irrespective of whether separations occur. However, agencies may find it necessary to use this authority to expeditiously separate some policy-influencing employees for poor performance or misconduct. Such removal proceedings will occur more quickly and at lower cost than under current procedures.

D. Costs

In the 2024 rulemaking, OPM concluded that implementing Schedule F would adversely affect agency recruitment and retention efforts. As discussed above, OPM has reconsidered those concerns and finds them unpersuasive. They were predicated on the assumption that the policy-influencing exception to chapter 75 would be used to resurrect the spoils system and convert large numbers of career positions to short-term political appointments. E.O. 13957, as amended, provides that Schedule Policy/Career

positions remain career appointments, filled using civil service merit hiring procedures, and forbids agencies from filling them based on political contributions or affiliation. Schedule Policy/Career maintains merit-based competitive hiring procedures, the original purpose of the Pendleton Act, while providing for expeditious removal of poorly performing employees. The Congressional Budget Office's analysis that most Federal employees place a relatively low value on the availability of adverse action appeals reinforces OPM's conclusion that the rule would create minimal recruitment and retention issues. Accordingly, OPM concludes that Schedule Policy/Career will not incur the costs it previously expected of Schedule F.

Agencies, if they have not done so already, must also update their internal policies and procedures to ensure compliance with E.O. 13957, as amended, and the amendments it made to the civil service rules. OPM is conforming its regulations to the operative legal requirements. This will not impose additional costs on agencies. However, agencies will be required to update their internal policies and procedures to conform to the regulatory amendments this rule makes to parts 432 and 752. Since these revisions rescind existing regulatory requirements to follow adverse action procedures and appeals, the rule will not increase agency compliance costs beyond updating internal procedures. In addition, this rulemaking will relieve agencies of any litigation costs that would have arisen under the amendments made by the April 2024 final rule. The rule will affect the operations of more than 80 Federal agencies, ranging from cabinet-level departments to small independent agencies. The cost analysis to update policies and procedures assumes an average salary rate of Federal employees performing work at the 2025 rate for a GS-14, step 5, from the Washington, DC, locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate). As in the 2024 rulemaking, OPM assumes the total dollar value of labor, which includes wages, and OPM estimates that the cost to comply with updating policies and procedures in the first year would require an average of 40 hours of work by employees with an average hourly cost of \$154.76 per hour. Upon effectuation of the final rule, this may result in first-year estimated costs of about \$6,200 per agency, and about \$495,000 government-wide. There are ongoing costs associated with routinely reviewing and updating internal

policies and procedures, but these costs will be incurred with or without the changes made here.

OPM estimates that approximately 50,000 positions will be moved or transferred into Schedule Policy/Career, about two percent of the Federal civilian workforce. The President may move a greater or smaller number of positions, but OPM believes this is a reasonable preliminary estimate. Of those positions moved into Schedule Policy/Career, OPM estimates 45,000 will be filled by incumbent employees and 5,000 will be vacant and filled by new hires.⁵⁰⁴

OPM estimates that the 45,000 incumbent employees whose positions are moved into Schedule Policy/Career will incur some costs associated with these changes in the first year following publication of this rule. These employees will need to familiarize themselves with the changes in their rights and responsibilities due to their shift to Schedule Policy/Career. Once they have familiarized themselves with these changes, they may reconsider their approach to various work assignments, for example to improve performance, and some may consider seeking alternative employment. Consistent with historical data, OPM estimates 7.3% of employees at the Senior Level and General Schedule 14 and 15 grade levels will voluntarily leave their positions for positions internal and external to the Federal Government.⁵⁰⁵ OPM also estimates these 45,000 employees will spend an average of four hours total familiarizing themselves with these changes and determining the best course of action to respond to these changes. OPM assumes that these employees have average salary equivalent to Federal employees at GS-14, step 5 in the Washington, DC locality. This assumption is based on the nature, scope, and type of duties described in E.O. 13957, as amended.⁵⁰⁶ As above, this implies hourly costs of \$154.76. This implies total first year costs along these lines of approximately \$27.9 million. OPM estimates that new hires will incur no additional costs

⁵⁰⁴ E.O. 14171 directly exempts newly filled Schedule Policy/Career positions from chapter 75 procedures, so the changes to part 752 authorizing incumbent employees moved into a policy-influencing position to retain coverage under that part will not affect new hires filling such positions.

⁵⁰⁵ See Off. of Pers. Mgmt., FedScope, Separations Trend FY 2015–FY 2024, <https://www.fedscope.opm.gov/>. This figure represents a weighted average across all three levels of positions. The unweighted average would be 8.2%. OPM limited its focus on these three levels as these populations will likely see the greatest number of positions placed in Schedule Policy/Career. However, OPM acknowledges that employees at lower grade levels may also be impacted.

⁵⁰⁶ Section 5(c) of E.O. 13957.

related to changes made in this rulemaking.

Commenter 35379 and others expressed skepticism regarding OPM's estimate that approximately 50,000 employees will be transferred into Schedule Policy/Career. Several commenters expressed suspicions that the real number of Policy/Career employees would be in the hundreds of thousands. Some commenters relied on the short-lived implementation efforts of Schedule F before its repeal by President Biden. Commenters noted that OPM authorized the Office of Management and Budget's submission which would have placed 416 of its 610 employees, about two thirds, into Schedule F. However, the Office of Management and Budget, a component of the Executive Office of the President almost uniquely devoted to the fulfillment of the President's policy mission, is not the normal case for an executive branch agency. In the short time between E.O. 13957 and the repeal of Schedule F, six agencies expressed to OPM that they would move *no* employees into Schedule F, and one agency requested that OPM place five positions (containing a total of five employees) out of a total workforce of 234 into Schedule F.⁵⁰⁷ Thus, roughly half the agencies which responded to the call to submit petitions to OPM regarding Schedule F indicated either that they did not intend to place *anyone* into Schedule F or that they intended to do so for a comparatively trivial proportion of their overall workforce, consistent with OPM's estimate that a small proportion of the civil service would be moved into Schedule Policy/Career. Contrary to commenters' fears, the evidence under prior Schedule F does not support the suspicion that a large proportion of the Federal workforce, numbering hundreds of thousands of employees, will be placed into Schedule Policy/Career.

Further, under both former Schedule F and current Schedule Policy/Career, agencies must submit their requests to place positions into the Schedule with OPM, which has an oversight function to, amongst other things, prevent overinclusion into the Schedule. The President, after reviewing OPM's recommendations, will transfer positions into Schedule Policy/Career by executive order, exercising an additional layer of oversight as compared to even former Schedule F. Both OPM and the White House have discretion to act if agencies attempt to overclassify. Commenters' reliance on statements made by individuals who are

now Trump Administration officials as private citizens do not reflect OPM's official position, are not binding on OPM, and cannot be used to override OPM's estimates.

E. Benefits

Excepting incumbent employees from chapter 43 and 75 procedures and MSPB appeals will reduce agency expenses during separations. Currently, approximately one-quarter of one percent of tenured Federal employees are dismissed for performance or conduct annually. Applying that percentage to the 45,000 incumbents estimated to be moved into Schedule Policy/Career implies that, in the absence of the rulemaking, agencies will be expected to separate 112 such employees annually.

OPM assumes that the exemption from chapter 75 will reduce the time agency supervisors and senior human resources staff must spend on each separation, prior to any administrative appeals, by a collective 600 hours, or 67,200 hours across all separations. OPM expects that supervisors will continue to document the basis for separations, but less time will be needed to prepare such documentation because supervisors will no longer have to comply with *Ward/Stone* due process requirements, which will no longer be needed to support an appeal in which the burden of proof lies with the agency.⁵⁰⁸

This cost analysis assumes an average salary rate of Federal supervisors and senior HR personnel performing this work at the 2025 rate for a GS-15, step 5, from the Washington, DC, locality pay table (\$189,950 annual locality rate and \$91.02 hourly locality rate). OPM again assumes the total value of labor is 200 percent of the hourly wage rate, for a total average hourly cost of \$182.04. This implies total annual agency savings of \$12.2 million.

OPM further assumes that one-quarter of those separations would have otherwise resulted in initial MSPB appeals, or 28 appeals in total. OPM assumes supervisors and other senior agency HR personnel would spend 120 hours preparing evidence, providing testimony, and otherwise preparing for each such appeal, and agency attorneys would spend a further 100 hours reviewing evidence, preparing submissions, and arguing each appeal. OPM assumes initial MSPB decisions will be decided by MSPB AJs who are also paid at the GS-15, step 5 level, and

they will spend 20 hours conducting each hearing and preparing their decision. This cost analysis again assumes an average hourly cost of \$182.04 for supervisors and HR personnel, and the same labor cost for MSPB administrative judges. The attorneys are assumed to be GS-14, step 5 employees receiving Washington, DC locality pay (\$161,486 annual locality rate and \$77.38 hourly locality rate). With the total value of labor at 200 percent of hourly pay, the hourly cost of an attorney is \$154.76 per hour. This implies that agencies save \$33,000 for each MSPB appeal forgone, for a total of \$0.9 million in annual savings government-wide.

Thus, having these separations proceed through Schedule Policy/Career procedures instead of chapter 43 or 75 would be expected to save agencies approximately \$13.2 million annually.⁵⁰⁹ This figure excludes the cost of appeals to the full MSPB and potentially Federal court. As another consideration with respect to potential litigation, OPM notes that the number of Equal Employment Opportunity (EEO) complaints may increase as employees placed under Schedule Policy/Career will no longer be able to file initial appeals with the MSPB. Employees may turn to EEO as another avenue to contest agency actions. Consequently, some of the savings might not be realized. However, we do not have data on the potential number of EEO complaints, and it would be speculative to assign a cost.⁵¹⁰ OPM also views the risk of adverse outcomes from EEO complaints as low as agencies are properly incentivized to make appropriate recommendations to the President for reclassifying a position to Schedule Policy/Career. The authority to place positions into Schedule Policy/Career rests with the President who is not subject to Federal employment anti-discrimination laws.⁵¹¹ And while complainants may attempt to impute liability on employing agencies for carrying out the President's orders, OPM views the risk of an adverse outcome resulting from this as minimal. Likewise, OPM also views the risk from adverse outcomes resulting from

⁵⁰⁹ For purposes of E.O. 14192 accounting, these benefits are considered cost savings.

⁵¹⁰ Please note that, with regard to PPPs, there will not be an increase in complaints to the Office of Special Counsel because Schedule Policy/Career positions are excluded from 5 U.S.C. 2302(a)(2)(B)(i).

⁵¹¹ *Trump v. United States*, 603 U.S. 593, 611 (2024) (quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 756 (1982) ("the President must be absolutely immune from damages liability for acts within the outer perimeter of his official responsibility") (internal quotations omitted)).

⁵⁰⁸ See *Ward v. U.S. Postal Serv.*, 634 F.3d 1274 (Fed. Cir. 2011); *Stone v. Federal Deposit Ins. Corp.*, 179 F.3d 1368 (Fed. Cir. 1999).

⁵⁰⁷ See 2022 GAO report, at 16, 18–19.

agencies taking appropriate personnel actions and otherwise complying, or failing to do so, with Federal anti-discrimination laws as low. Agencies are appropriately incentivized and directed under E.O. 13957 not to treat Schedule Policy/Career in violation of PPPs including discrimination based on protected characteristics such as religion, disability, color, and others.

OPM thus estimates that these reforms would produce \$27.9 million in one-time first year costs, against \$13.2 million in annual savings. Over a 10-year period, this represents considerable savings. However, OPM expects that there will be significant additional benefits from this final rule that are harder to quantify. Commenter 32359 notes research showing that underperforming employees reduce their work unit's productivity by 30 percent. Facilitating the removal of poor performers in senior policy-influencing roles could thus have a large impact on agency operations. However, because agency productivity generally cannot be measured in terms of economic output the way private employment can, it is difficult to economically quantify the scope of these benefits.

Nonetheless, OPM anticipates that EEO complaints often cost less than MSPB appeals because, with the exception of failure to accommodate claims, employees have the burden of proof before the EEOC. Further, unlike the MSPB, the EEOC has summary judgment. Accordingly, agencies would avoid the costs associated with hearings in a percentage of EEO cases. Increased accountability would also be expected to incentivize employees, where applicable, to improve problematic performance and conduct. This would produce large gains in agency efficiency, but OPM does not have a reasonable basis for estimating the magnitude of these gains and thus cannot quantify them across agencies. Similarly, higher employee performance and greater adherence to nonpartisan norms would be expected to reduce the costs associated with waste and lost efficiency. A final benefit of this rule is that it will align OPM regulations with the operative legal standards. This will promote greater agency and employee understanding of the procedures governing the civil service. OPM consequently expects that the rule will have substantial net benefits, even though most of those benefits are difficult to quantify.

One commenter took issue with OPM's cost estimates. Commenter 4558 asserted that OPM's refusal to disclose cost impact models violates the Administrative Procedure Act under

Chamber of Commerce. This assertion is unavailing. Under the Administrative Procedure Act, there is no cost impact on the general public or on persons who are appointed to or converted to Schedule Policy/Career. Nevertheless, the costs and benefits explained in this section of the rule show a significant internal savings for Government agencies in addressing adverse personnel decisions under Schedule Policy/Career.

VII. Procedural Issues and Regulatory Review

A. Severability

If any of the provisions of this rule as finalized are held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. In enforcing civil service protections and merit system principles, OPM will comply with all applicable legal requirements.

Commenter 8203 expressed the concern that the components of the present rulemaking are so deeply connected that, should any part of the rulemaking be invalidated, courts may be forced to invalidate the entire rulemaking, notwithstanding the severability clause.⁵¹² As a general rule, courts will respect the severability clause in an agency's regulation.⁵¹³ Courts will respect a severability clause if "the remainder of the regulation could function sensibly without the stricken provisions."⁵¹⁴ Courts "adhere to the text of a severability clause in the absence of extraordinary circumstances."⁵¹⁵ In other words, a severability clause will be respected if any coherent regulatory purpose remains after the offending portions of the regulation are invalidated.

The Fifth Circuit's decision in *Texas v. United States* evidences the lengths that courts will go to in order to preserve the non-defective portions of a regulation in light of a severability clause and a partial invalidation. There, the court found invalid DHS regulations concerning the Deferred Action for Childhood Arrivals (DACA) program. The district court found the Biden-era

regulations invalid as in contravention of the Immigration and Nationality Act to the extent that certain benefits provided to DACA recipients were in violation of statute. However, the Fifth Circuit reversed the district court's refusal to respect the severability clause (and, as a consequence, the district court's reversal of the entire rulemaking). The Fifth Circuit found that, even if the benefits provided to DACA recipients were legally invalid, the policy of forbearance from removal action contained in the regulatory scheme provided a sufficient purpose for respecting them as valid. Since these provisions could be preserved and rationally defended after severing the unlawful portions, the severability clause was given effect.

OPM cannot fully anticipate either future challenges to this rulemaking or the judicial resolution to those challenges. For the reasons previously discussed OPM believes the rule is lawful and should be upheld in full. OPM declines to comment in detail concerning whether any portion of the present rulemaking would survive as severable should any of the present regulatory changes be deemed invalid. However, while much of the present rulemaking is intended to advance the creation of Schedule Policy/Career, other portions, such as the repeal of subpart F of part 302, are legally and analytically distinct. OPM thus reiterates that it intends for the severability clause in the present rulemaking to be effectuated if possible.

B. Regulatory Flexibility Act

The Director of the Office of Personnel Management certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because the rule will apply only to Federal agencies and employees.

C. Regulatory Review

OPM has examined the impact of this rulemaking as required by E.O.s 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. A regulatory impact analysis must be prepared for major rules with effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated as a "significant regulatory action" under section 3(f) of E.O. 12866. This action is considered an Executive Order 14192 deregulatory action. We estimate that this rule generates \$9.94

⁵¹² For the severability clause, see 90 FR 17221.

⁵¹³ See, e.g., *Am. Fuel & Petrochemical Mfrs. v. Env't Prot. Agency*, 3 F.4th 373, 384 (D.C. Cir. 2021) ("Severability depends on the issuing agency's intent. . . .") (cleaned up); *Texas v. United States*, 126 F.4th 392 (5th Cir. 2025).

⁵¹⁴ *Texas*, 126 F.4th at 419 (cleaned up).

⁵¹⁵ *Id.* (cleaned up).

million in annualized cost savings at a 7% discount rate, discounted relative to year 2024, over a perpetual time horizon.

D. Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132 (Aug. 10, 1999), it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E. Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and (b)(2) of E.O. 12988 (Feb. 7, 1996).

F. Unfunded Mandates Reform Act of 1995

This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with the base year 1995). Thus, no written assessment of unfunded mandates is required.

G. Congressional Review Act

OMB's Office of Information and Regulatory Affairs has determined this rule does not satisfy the criteria listed in 5 U.S.C. 804(2).

H. Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

5 CFR Parts 210 and 212

Government employees.

5 CFR Part 213

Government employees, Reporting and recordkeeping requirements.

5 CFR Parts 302 and 432

Government employees.

5 CFR Part 451

Decorations, Government employees.

5 CFR Part 537

Government employees, Wages.

5 CFR Part 575

Government employees, Wages.

5 CFR Part 752

Government employees.

Accordingly, for the reasons stated in the preamble, OPM amends 5 CFR parts 210, 212, 213, 302, 432, 451, 537, 575, and 752 as follows:

PART 210—BASIC CONCEPTS AND DEFINITIONS (GENERAL)

- 1. The authority citation for part 210 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218.

Subpart A—Applicability of Regulations; Definitions

§ 210.102 [Amended]

- 2. Amend § 210.102 by:
 - a. Removing paragraphs (b)(3) and (4); and
 - b. Redesignating paragraphs (b)(5) through (b)(20) as (b)(3) through (b)(18).

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

- 3. The authority citation for part 212 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218; E.O. 14171, 90 FR 8625.

Subpart D—Effect of Competitive Status on Promotion

- 4. Amend § 212.401 by revising paragraph (b) to read as follows:

§ 212.401 Effect of competitive status on position.

* * * * *

(b) Unless expressly stated otherwise in 5 CFR Chapter I, Subchapter A, an employee with competitive status at the time that his or her position is first listed in an excepted service schedule, or that the employee moved to a position in the excepted service, is no longer in the competitive service but retains competitive status.

PART 213—EXCEPTED SERVICE

- 5. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3161, 3301 and 3302; 38 U.S.C. 4301 *et seq.* E.O. 10577, 19 FR 7521, 3 CFR 1954–1958 Comp., p. 218; E.O. 14171, 90 FR 8625.

Sec. 213.101 also issued under 5 U.S.C. 2103.

Sec. 213.3102 also issued under 5 U.S.C. 3307, 8337(h), 8456; 38 U.S.C. 4301 *et seq.* E.O. 12125, 44 FR 16879, 3 CFR, 1979 Comp., p. 375; E.O. 13124, 64 FR 31103, 3 CFR, 1999 Comp., p. 192; E.O. 13562, 75 FR 82585, 3 CFR, 2010 Comp., p. 291; E.O. 14217, 90 FR 10577; and Presidential Memorandum of May 11, 2010, 75 FR 27157, 3 CFR, 2010 Comp., p. 327.

Sec. 213.3202 also issued under 5 U.S.C. 3304.

Subpart A—General Provisions

- 6. Revise § 213.101 to read as follows:

§ 213.101 Definitions.

(a) In this chapter:

(1) *Excepted service* has the meaning given that term by section 2103 of title 5, United States Code, and includes all positions in the Executive Branch of the Federal Government which are specifically excepted from the competitive service by or pursuant to statute, by the President, or by the Office of Personnel Management, and which are not in the Senior Executive Service. An employee encumbering an excepted position is in the excepted service, irrespective of whether the employee possesses competitive status.

(2) *Excepted position* means a position in the excepted service.

(b) In this part:

(1) *Career position* means a position that is not a noncareer position.

(2) *Noncareer position* means a position associated with an appointment that carries no expectation of continued employment beyond the Presidential administration during which the appointment occurred and whose occupant is normally, as a matter of practice, expected to resign upon a Presidential transition. This phrase encompasses all positions whose appointments involve preclearance by the White House Office of Presidential Personnel.

- 7. Amend § 213.102 by revising the section heading and adding paragraph (d) to read as follows:

§ 213.102 Identification of positions in Schedule A, B, C, D, or Policy/Career.

* * * * *

(d) The President may directly place positions in Schedule Policy/Career.

- 8. Revise § 213.103 to read as follows:

§ 213.103 Publication of excepted appointing authorities in Schedules A, B, C, D, and Policy/Career.

(a) Schedule A, B, C, D, and Policy/Career appointing authorities available for use by all agencies will be published as regulations in the **Federal Register** and the Code of Federal Regulations.

(b) Establishment and revocation of Schedule A, B, C, and Policy/Career appointing authorities applicable to a single agency shall be published monthly in the Notices section of the **Federal Register**.

(c) A consolidated listing of all Schedule A, B, C, and Policy/Career authorities current as of June 30 of each year, with assigned authority numbers,

shall be published annually as a notice in the **Federal Register**.

■ 9. Revise and republish § 213.104 to read as follows:

§ 213.104 Special provisions for temporary, time-limited, intermittent, or seasonal appointments in Schedule A, B, C, D, or Policy/Career.

(a) When OPM specifies that appointments under a particular Schedule A, B, C, D, or Policy/Career authority must be temporary, intermittent, or seasonal, or when agencies elect to make temporary, intermittent, or seasonal appointments in Schedule A, B, C, D, or Policy/Career, those terms have the following meaning:

(1) *Temporary appointments*, unless otherwise specified in a particular Schedule A, B, C, D, or Policy/Career exception, are made for a specified period not to exceed 1 year and are subject to the time limits in paragraph (b) of this section. Time-limited appointments made for more than 1 year are not considered to be temporary appointments and are not subject to the time limits.

(2) *Intermittent positions* are positions in which work recurs at sporadic or irregular intervals so that an employee's tour of duty cannot be scheduled in advance of the administrative workweek.

(3) *Seasonal positions* involve annually recurring periods of employment lasting less than 12 months each year.

(b) Temporary appointments, as defined in paragraph (a)(1) of this section, are subject to the following limits:

(1) *Service limits*. Agencies may make temporary appointments for a period not to exceed 1 year, unless the applicable Schedule A, B, C, D, or Policy/Career authority specifies a shorter period. Except as provided in paragraph (b)(3) of this section, agencies may extend temporary appointments for no more than 1 additional year (24 months of total service). Appointment to a successor position (*i.e.*, a position that replaces and absorbs the original position) is considered to be an extension of the original appointment. Appointment to a position involving the same basic duties, in the same major subdivision of the agency, and in the same local commuting area, is also considered to be an extension of the original appointment.

(2) *Restrictions on refilling positions under temporary appointments*. Except as provided in paragraph (b)(3) of this section, an agency may not fill any position (or its successor) by a temporary appointment in Schedule A,

B, C, D, or Policy/Career if that position had previously been filled by temporary appointment(s) in either the competitive or excepted service for an aggregate of 2 years, or 24 months, within the preceding 3-year period. This limitation does not apply to programs established to provide for systematic exchange between a Federal agency and non-Federal organizations.

(3) *Exceptions to the general limits*. The service limits and restrictions on refilling positions set out in this section do not apply when:

(i) Positions involve intermittent or seasonal work, and employment in the same or a successor position under one or more appointing authorities totals less than 6 months (1,040 hours), excluding overtime, in a service year. The service year is the calendar year that begins on the date of the employee's initial appointment in the agency. Should employment in a position filled under this exception total 6 months or more in any service year, the general limits set out in this section will apply to subsequent extension or reappointment unless OPM approves continued exception under this section. An individual may be employed for training for up to 120 days following initial appointment and up to 2 weeks a year thereafter without regard to the service year limitation.

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in § 213.3102(r) and (s) and § 213.3402(a), (b), and (c), and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

(iii) OPM approves extension of specific temporary appointments beyond 2 years (24 months total service) when necessitated by major reorganizations or base closings or other rare and unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual circumstances may be submitted by the employing office to the appropriate OPM service center.

Subpart C—Excepted Schedules

■ 10. Amend § 213.3301 by revising the section heading and paragraph (a) to read as follows:

§ 213.3301 Positions of a confidential or policy-determining character normally subject to change as a result of a Presidential transition.

(a) Upon specific authorization by OPM, agencies may make appointments under this section to noncareer positions that are of a confidential or policy-determining character and are normally subject to change as a result of a Presidential transition. Positions filled under this authority are excepted from the competitive service and constitute Schedule C. Each position will be assigned a number from 213.3302 through 213.3399, or other appropriate number, to be used by the agency in recording appointments made under that authorization.

* * * * *

■ 11. Add a new undesignated, centered heading after § 213.3402 to read as follows:

Schedule Policy/Career

■ 12. Add § 213.3601 below the undesignated heading SCHEDULE POLICY/CAREER.

§ 213.3601 Career positions of a confidential, policy-determining, policy-making, or policy-advocating character.

(a) As authorized by the President, agencies may make appointments under this section to career positions of a confidential, policy-determining, policy-making, or policy-advocating character that are not in the Senior Executive Service. Positions filled under this authority are excepted from the competitive service and constitute Schedule Policy/Career. For positions covered by this section, OPM will assign a number from 213.3602 through 213.3699, or other appropriate number, to be used by the appointing agency in recording appointments made under this section.

(b) Except as provided in paragraph (c) of this section, agencies must make appointments to positions in Schedule Policy/Career of the excepted service in the same manner as to positions in the competitive service, to include:

(1) Public notification of job opportunities;

(2) Applicant evaluation based on valid, job-related assessments; and

(3) Selections of highly qualified individuals based on merit.

(c) Agencies must make appointments to positions in Schedule Policy/Career of the excepted service that, but for their

placement in Schedule Policy/Career, would be listed in another excepted service schedule pursuant to the rules applicable to such positions in the corresponding schedule.

(d) In making appointments under paragraphs (b) and (c) of this section, agencies must follow the principles of veterans' preference as far as administratively feasible based on the rating, ranking, and selection processes used for making appointments. Except as otherwise authorized in part 302 of this chapter, where numerical ratings are used in the evaluation and referral of candidates, agencies shall follow the regulations related to veterans' preference in part 302 and subpart A of part 337 of this chapter, as applicable. When category rating is used, agencies shall follow the procedures related to veterans' preference in subpart C of part 337 of this chapter. Where another process is used, veteran status must be considered a positive factor.

(e) Employees in or applicants for Schedule Policy/Career positions are not required to personally or politically support the current President or the policies of the current administration. Employees in Schedule Policy/Career positions must faithfully implement administration policies to the best of their ability, consistent with their constitutional oath and the vesting of executive authority solely in the President. Failure to do so is grounds for dismissal.

(f) Individuals appointed to positions in Schedule Policy/Career are subject to trial periods as required by 5 CFR part 11. If they are appointed in the same manner as appointments in the competitive service, they acquire competitive status after completing two years of continuing service in the same or similar positions.

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

- 13. The authority citation for part 302 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 3317, 3318, 3319, 3320, 8151; E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218; E.O. 14171, 90 FR 8625.

Sec. 302.105 also issued under 5 U.S.C. 1104; sec. 3(5), Pub. L. 95–454, 92 Stat. 1112 (5 U.S.C. 1101 note).

Sec. 302.107 also issued under 5 U.S.C. 9201–9206; sec. 1122(b)(1), Pub. L. 116–92, 133 Stat. 1605 (5 U.S.C. 9201 note).

Sec. 302.501 also issued under 5 U.S.C. ch. 77.

Subpart A—General Provisions

- 14. Amend § 302.101 by revising paragraphs (c)(7) and (8), and adding paragraph (c)(12) to read as follows:

§ 302.101 Positions covered by regulations.

* * * * *

(c) * * *

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter);

(8) Attorney positions;

* * * * *

(12) Confidential, policy-determining, policy-making or policy-advocating positions filled under Schedule Policy/Career authorized under Executive Order 13957, as amended. Appointments under this authority must be made in accordance with the provisions of § 213.3601 of this chapter.

- 15. Amend § 302.102 by revising the last sentence of paragraph (c) to read as follows:

§ 302.102 Method of filling positions and status of incumbent.

* * * * *

(c) * * * Persons appointed pursuant to a specific authorization by OPM under this paragraph may acquire competitive status.

Subpart F [Removed]

- 16. Remove subpart F, “Moving Employees and Positions into and Within the Excepted Service”, consisting of §§ 302.601 through 302.603.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

- 17. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4303, 4305.

- 18. Amend § 432.102 by revising paragraph (f)(10) to read as follows:

§ 432.102 Coverage.

* * * * *

(f) * * *

(10) An employee occupying a position in Schedule C or Schedule Policy/Career as authorized under part 213 of this chapter;

* * * * *

PART 451—AWARDS

- 19. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4302, 4501–4509; E.O. 11438, 33 FR 18085, 3 CFR, 1966–1970 Comp., p. 755; E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart C—Presidential Rank Awards

- 20. Amend § 451.302 by revising paragraph (b)(3)(ii) to read as follows:

§ 451.302 Ranks for senior career employees.

* * * * *

(b) * * *

(3) * * *

(ii) To positions that are excepted from the competitive service because of their confidential or policy-making character.

* * * * *

PART 537—STUDENT LOAN REPAYMENTS

- 21. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 2301, 2302, and 5379(g). E.O. 11478, 3 CFR, 1966–1970 Comp., p. 803, unless otherwise noted; E.O. 13087, 63 FR 30097, 3 CFR, 1998 Comp., p. 191; and E.O. 13152, 65 FR 26115, 3 CFR, 2000 Comp., p. 264.

- 22. Amend § 537.104 by revising paragraph (b) to read as follows:

§ 537.104 Employee eligibility.

* * * * *

(b) An employee occupying a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character is ineligible for student loan repayment benefits, except that an employee whose position is moved into Schedule Policy/Career may continue to receive student loan repayment benefits based on the terms of the existing applicable service agreement, unless eligibility is lost as described in § 537.108.

* * * * *

PART 575—RECRUITMENT, RELOCATION, AND RETENTION INCENTIVES; SUPERVISORY DIFFERENTIALS; AND EXTENDED ASSIGNMENT INCENTIVES

- 23. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2) and 5307. Subparts A and B also issued under 5 U.S.C. 5753. Subpart C also issued under 5 U.S.C. 5754. Subpart D also issued under 5 U.S.C. 5755. Subpart E also issued under 5 U.S.C. 5757 and sec. 207 Pub. L. 107–273, 116 Stat. 1780 (5 U.S.C. 5307 note).

Subpart A—Recruitment Incentives

- 24. Revise and republish § 575.104 to read as follows:

§ 575.104 Ineligible categories of employees.

An agency may not pay a recruitment incentive to an employee in—

(a)(1) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(2) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(3) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(4) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(i) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

(ii) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;

(iii) In which the employee is expected to receive an appointment as the head of an agency; or

(iv) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

(b) Notwithstanding any other provision in this subpart, an agency may—

(1) Based on the terms of the applicable service agreement, continue to pay any outstanding recruitment incentive payments to an employee whose position is moved into Schedule Policy/Career and require the employee to fulfill that term; or

(2) Terminate the service agreement under the conditions in § 575.111(a) for an employee whose position is moved into Schedule Policy/Career.

Subpart B—Relocation Incentives

■ 25. Revise and republish § 575.204 to read as follows:

§ 575.204 Ineligible categories of employees.

An agency may not pay a relocation incentive to an employee in—

(a)(1) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(2) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(3) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(4) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(i) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

(ii) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;

(iii) In which the employee is expected to receive an appointment as the head of an agency; or

(iv) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

(b) Notwithstanding any other provision in this subpart, an agency may—

(1) Based on the terms of the applicable service agreement, continue to pay any outstanding relocation incentive payments to an employee whose position is moved into Schedule Policy/Career and require the employee to fulfill that agreed-upon service period; or

(2) Terminate the service agreement under the conditions in § 575.211(a) for an employee whose position is moved into Schedule Policy/Career.

Subpart C—Retention Incentives

■ 26. Revise § 575.304 to read as follows:

§ 575.304 Ineligible categories of employees.

An agency may not pay a retention incentive to an employee in—

(a)(1) A position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(2) A position in the Senior Executive Service as a noncareer appointee (as defined in 5 U.S.C. 3132(a)(7));

(3) A position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(4) A position not otherwise covered by the exclusions in paragraphs (a), (b), and (c) of this section—

(i) To which an individual is appointed by the President without the advice and consent of the Senate, except a Senior Executive Service position in which the individual serves as a career appointee (as defined in 5 U.S.C. 3132(a)(4));

(ii) Designated as the head of an agency, including an agency headed by a collegial body composed of two or more individual members;

(iii) In which the employee is expected to receive an appointment as the head of an agency; or

(iv) To which an individual is appointed as a Senior Executive Service limited term appointee or limited emergency appointee (as defined in 5 U.S.C. 3132(a)(5) and (a)(6), respectively) when the appointment must be cleared through the White House Office of Presidential Personnel.

(b) Notwithstanding any provision in this subpart, an agency may—

(1) Continue to pay a retention incentive to an employee whose position is moved into Schedule Policy/Career based on the terms of the service agreement and require the employee to fulfill that agreed-upon service period; and

(2) Continue to pay a retention incentive to an employee whose position is moved into Schedule Policy/Career at a time when the employee is receiving a retention incentive without a service agreement, so long as the agency finds that the payment otherwise continues to be warranted in consideration of the factors set forth in § 575.311(f).

PART 752—ADVERSE ACTIONS

■ 27. The authority citation for part 752 is revised to read as follows:

Authority: 5 U.S.C. 6329b, 7504, 7514, 7515, and 7543; 38 U.S.C. 7403. E.O. 10577, 19 FR 7521, 3 CFR, 1954–1958 Comp., p. 218.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

■ 28. Amend § 752.201 by:

■ a. Revising paragraphs (b), (c)(5) and (6), and;

■ b. Removing paragraph (c)(7).

The revisions read as follows:

§ 752.201 Coverage.

* * * * *

(b) *Employees covered.* This subpart covers:

(1) An employee in the competitive service who has completed a probationary or trial period, or who has completed 1 year of current continuous

employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(2) An employee in the competitive service serving in an appointment which requires no probationary or trial period, and who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

(3) An employee with competitive status who occupies a position under Schedule B of part 213 of this chapter;

(4) An employee who was in the competitive service at the time his or her position was first listed under Schedule A or B of the excepted service and still occupies that position;

(5) An employee of the Department of Veterans Affairs appointed under 38 U.S.C. 7401(3); and

(6) An employee of the Government Publishing Office.

(c) * * *

(5) Of a National Guard Technician; or

(6) Taken under 5 U.S.C. 7515.

* * * * *

Subpart D—Regulatory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

■ 29. Amend § 752.401 by revising paragraphs (c) and (d)(2) to read as follows:

§ 752.401 Coverage.

* * * * *

(c) *Employees covered.* This subpart covers:

(1) A career or career conditional employee in the competitive service who is not serving a probationary or trial period;

(2) An employee in the competitive service—

(i) Who is not serving a probationary or trial period under an initial appointment; or

(ii) Who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(3) An employee in the excepted service who is a preference eligible in an Executive agency as defined at section 105 of title 5, United States Code, the U.S. Postal Service, or the Postal Regulatory Commission and who has completed 1 year of current continuous service in the same or similar positions;

(4) A Postal Service employee covered by Public Law 100–90 who has completed 1 year of current continuous service in the same or similar positions and who is either a supervisory or management employee or an employee engaged in personnel work in other than a purely nonconfidential clerical capacity;

(5) An employee in the excepted service who is a nonpreference eligible in an Executive agency as defined at 5 U.S.C. 105, and who has completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less;

(6) An employee with competitive status who occupies a position in Schedule B of part 213 of this chapter;

(7) An employee who was in the competitive service at the time his or her position was first listed under Schedule A or B of the excepted service and who still occupies that position;

(8) An employee of the Department of Veterans Affairs appointed under 38 U.S.C. 7401(3); and

(9) An employee of the Government Publishing Office.

(d) * * *

(2) An employee whose position is in Schedule C or Schedule Policy/Career.

* * * * *

■ 30. Amend § 752.405 by revising paragraph (a) to read as follows:

§ 752.405 Appeal and grievance rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board. Employees listed under § 752.401(d) may not appeal to the Merit Systems Protection Board under this section, irrespective of whether they or their positions were previously covered by this subpart.

* * * * *

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Jerson Matias,

Federal Register Liaison, Office of Personnel Management.

[FR Doc. 2026–02375 Filed 2–5–26; 8:45 am]

BILLING CODE 6325–39–P



FEDERAL REGISTER

Vol. 91

Friday,

No. 25

February 6, 2026

Part III

The President

Proclamation 11008—National Black History Month, 2026

Notice of February 3, 2026—Continuation of the National Emergency With
Respect to the Situation in and in Relation to Burma

Presidential Documents

Title 3—

Proclamation 11008 of February 3, 2026

The President

National Black History Month, 2026

By the President of the United States of America

A Proclamation

This year, we celebrate the most significant milestone in our Nation's history: 250 glorious years of American independence. From the very beginning, our country has been blessed with countless black American heroes. For more than two and a half centuries, these legends have made timeless contributions to our government, laws, military, economy, workforce, and culture. With their tremendous legacy in mind, as President, I proclaim that "black history" is not distinct from American history—rather, the history of black Americans is an indispensable chapter in our grand American story.

America's founding was rooted in the belief that every man, woman, and child is created equal, "endowed by their Creator with certain unalienable Rights," and free to live lives in "pursuit of Happiness." For 250 years, these principles have inspired and informed the independent, bold, and pioneering American spirit. It is our bedrock belief in equality that drove black American icons to help fulfill the promise of these principles. And it is our unwavering commitment to liberty that continues to sustain our Nation's greatness.

This month, we are also reminded that the source of our strength is rooted not in our differences, but in our shared commitment to freedom under one beautiful American flag. For decades, the progressive movement and far-left politicians have sought to needlessly divide our citizens on the basis of race, painting a toxic and distorted and disfigured vision of our history, heritage, and heroes. This month, however, we do not celebrate our differences. Instead, we celebrate the contributions of black Americans to our national greatness and their enduring commitment to the American principles of liberty, justice, and equality—the principles that wrested the Western Hemisphere from monarchies and empires, ended slavery, saved Europe, put a man on the moon, and built the freest, most just, and most prosperous society ever known to mankind.

Since the great Prince Estabrook became the first black man to shed his blood for our emerging Nation at the Battle of Lexington more than 250 years ago, heroic black Americans have valiantly fought for our liberty on the fields of battle, in the pews of our churches, and in our shops, restaurants, and businesses. Across every generation, legendary black Americans have fiercely defended the values set forth in our Declaration of Independence and helped to make our Republic the greatest country in the history of the world. From the unflinching faith of Lemuel Haynes, the soaring prose of Phillis Wheatley, and the unmatched resolve of Harriet Tubman to the towering intellect of Frederick Douglass, the fearlessness of Jesse Owens, and the brilliance of Katherine Johnson and Thomas Sowell, countless black patriots have stood as the vanguards of our freedom—and are among some of the most heroic Americans to have ever lived.

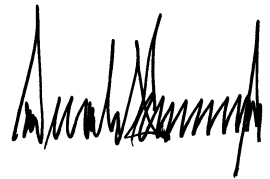
As President, I am fighting to restore the Nation that these titans helped build, and to make America greater than ever before. In their honor, and to commemorate 250 years of American liberty, I have authorized the construction of the National Garden of American Heroes, a new statuary park

honoring our greatest Americans, including black icons like Booker T. Washington, Jackie Robinson, Aretha Franklin, Coretta Scott King, Muhammad Ali, and many others. Last spring, I also signed an Executive Order to promote excellence and innovation at Historically Black Colleges and Universities so the next generation of leaders in the black community will learn from these great American examples. And I am fighting every day to make our neighborhoods safer, groceries more affordable, and the American Dream more attainable for all Americans.

My Administration will never stop working to ensure that our country and every future generation of American citizens remain guided by the same truth: We are one Nation, under God, indivisible, with liberty and justice for all.

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, do hereby proclaim February 2026 as National Black History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fiftieth.

A handwritten signature in black ink, appearing to be "Donald J. Trump", with a stylized, jagged flourish at the end.

Presidential Documents

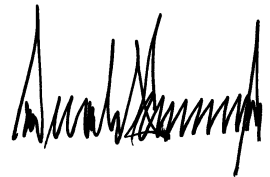
Notice of February 3, 2026

Continuation of the National Emergency With Respect to the Situation in and in Relation to Burma

On February 10, 2021, by Executive Order 14014, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Burma.

The situation in and in relation to Burma continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. My Administration is closely monitoring developments in and in relation to Burma and is engaging with relevant stakeholders and regional partners to encourage dialogue among conflict parties that reduces violence and increases political stability. I am prepared to calibrate pressure as necessary to protect American interests in and in relation to Burma. For this reason, the national emergency declared on February 10, 2021, must continue in effect beyond February 10, 2026. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 14014 with respect to the situation in and in relation to Burma.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
February 3, 2026.

Reader Aids

Federal Register

Vol. 91, No. 25

Friday, February 6, 2026

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.govinfo.gov.

Federal Register information and research tools, including Public Inspection List and electronic text are located at: www.federalregister.gov.

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4427-4842	2
0000-5090	3
5091-5212	4
5213-5266	5
5267-5664	6

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

11006	4841
11007	5077
11008	5661

Executive Orders:

14379	5081
14380	5085
14381	5211

Administrative Orders:

Notices:	
Notice of February 3, 2026	5663

5 CFR

210	5580
212	5580
213	5580
302	5580
432	5580
451	5580
537	5580
575	5580
752	5580

Proposed Rules:

731	5352
831	5095
842	5095
890	4857

7 CFR

Proposed Rules:

920	5365
944	5365

8 CFR

214	5040
1003	5267
1208	5267
1240	5267

10 CFR

72	4427

12 CFR

1293	5278

14 CFR

39	4428, 4431, 4434, 4438, 4442, 4445, 5283
71	5285, 5287, 5288, 5289
91	4447
97	5213, 5214
121	4447
125	4447
135	4447

Proposed Rules:

39	4857, 5368, 5371, 5375, 5378, 5381, 5384
141	4464, 4465

15 CFR

740	5091

17 CFR

Proposed Rules:

40	5386

18 CFR

157	5290
375	4462

20 CFR

655	5040

21 CFR

73	5291, 5295
516	5299
520	5299
522	5299
529	5299
556	5299
558	5299
1300	5216
1301	5216
1304	5216
1306	5216
1307	5216

23 CFR

Proposed Rules:

450	4465

26 CFR

Proposed Rules:

1	5160
48	5160

32 CFR

220	5303

33 CFR

117	4846, 5316, 5317
165	4848, 5318, 5320

36 CFR

Proposed Rules:

218	5387

40 CFR

52	5321, 5325

Proposed Rules:

52	5398
174	4466
180	4466
268	5400

42 CFR

433	4794

45 CFR

Proposed Rules:

84	4467

47 CFR

1	5242

ii

Federal Register / Vol. 91, No. 25 / Friday, February 6, 2026 / Reader Aids

64.....5242	1019.....4849	1116.....4849	50 CFR
Proposed Rules:	1021.....4849	1130.....4849	622.....5092, 5243
2.....5245	1102.....4849	1132.....4849	679 4856, 5093, 5243, 5244
49 CFR	1103.....4849	1150.....4849	Proposed Rules:
1002.....4849	1104.....4849	1151.....4849	17 5103
1007.....4849	1105.....4849	1152.....4849	217 4468
1011.....4849	1109.....4849	1155.....4849	600.....5245
1012.....4849	1110.....4849	1177.....4849	660 4485, 5245, 5408
1018.....4849	1113.....4849	1180.....4849	680 4492
	1114.....4849	1253.....4849	
	1115.....4849		

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at <https://www.archives.gov/federal-register/laws/current.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202-512-1808). The text is available at <https://www.govinfo.gov/app/collection/plaw>. Some laws may not yet be available.

H.R. 7148/P.L. 119-75
Consolidated Appropriations Act, 2026 (Feb. 3, 2026; 140 Stat. 173)
Last List January 28, 2026

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly

enacted public laws. To subscribe, go to https://portalguard.gsa.gov/_layouts/pg/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.