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Contents

Federal Register

Vol. 91, No. 27

Tuesday, February 10, 2026

Agricultural Marketing Service

PROPOSED RULES

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon:
Decreased Assessment Rate, 5877–5880

Agriculture Department

See Agricultural Marketing Service

See Commodity Credit Corporation

See Food Safety and Inspection Service

See Natural Resources Conservation Service

Air Force Department

NOTICES

Licenses; Exemptions, Applications, Amendments, etc.,
5929

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 5950–5951

Civil Rights Cold Case Records Review Board

NOTICES

Formal Determination on Records Release, 5885

Coast Guard

RULES

Security Zone:
Potomac River and Anacostia River, and Adjacent waters;
Washington, DC, 5805–5806

Commerce Department

See Economic Development Administration

See Foreign-Trade Zones Board

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Commission of Fine Arts

NOTICES

Hearings, Meetings, Proceedings, etc., 5929

Commodity Credit Corporation

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Advancing Markets for Producers (Formerly Partnerships
for Climate-Smart Commodities), 5884–5885

Comptroller of the Currency

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Retail Foreign Exchange Transactions, 5989–5990

Defense Department

See Air Force Department

Economic Development Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Requirements for Approved Construction and Non-
Construction Investments, 5885–5886

Employment and Training Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Job Corps Enrollee Allotment Determination, 5956–5957

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Hazardous and Solid Waste Management System:
Disposal of Coal Combustion Residuals from Electric
Utilities; CCR Management Unit Deadline Extension
Rule, 5806–5825

NOTICES

Pesticide Product Registration:
Cancellation Order, 5939–5943
Cancellation Order and/or Amendments to Terminate
Uses, 5943–5945

Federal Aviation Administration

PROPOSED RULES

Normalizing Unmanned Aircraft Systems beyond Visual
Line of Sight Operations; Reopening of Comment
Period; Denial of Extension, 5880

NOTICES

Aircraft Noise Complaint and Inquiry System (Noise
Portal); Correction, 5982

Federal Communications Commission

PROPOSED RULES

Television Broadcasting Services:
Norwell, MA, 5881–5882

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 5945–5949

Federal Energy Regulatory Commission

NOTICES

Application:
BIF III Holtwood LLC, 5937
Combined Filings, 5930–5931, 5935–5939
Effectiveness of Exempt Wholesale Generator Status:
SR Georgetown, LLC, Armadillo Solar Center, LLC, South
River Phase II, LLC, et al., 5934
Effectiveness of Withdrawal of Operating Plan and
Operation Compliance and Monitoring Plan:
Seneca Generation, LLC, 5934
Environmental Assessments; Availability, etc.:
Georgia Power Co., 5931–5932
New Hampshire Department of Environmental Services,
5938
Filing:
City of Anaheim, CA, 5932

City of Azusa, CA, 5938
City of Banning, CA, 5931
City of Colton, CA, 5934–5935
City of Pasadena, CA, 5929–5930
City of Riverside, CA, 5933–5934

Staff Attendance:

North American Electric Reliability Corporation Industry
Webinar, 5939

Virtual Scoping Session:

Columbia Gulf Transmission, LLC; Proposed Maysville
Project, 5932–5933

Federal Maritime Commission

NOTICES

Agreements Filed, 5949–5950

Federal Motor Carrier Safety Administration

NOTICES

Exemption Application:

Parts and Accessories Necessary for Safe Operation;
Liberty Bulk Transport, LLC, 5982–5984

Federal Reserve System

NOTICES

Change in Bank Control:

Acquisitions of Shares of a Bank or Bank Holding
Company, 5950

Fish and Wildlife Service

RULES

Endangered and Threatened Species:

Removal of the Southeast U.S. Distinct Population
Segment of the Wood Stork from the List of
Endangered and Threatened Wildlife, 5826–5855

Food Safety and Inspection Service

NOTICES

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

Sanitation SOPs and Pathogen Reduction/HACCP, 5883–
5884

Foreign-Trade Zones Board

NOTICES

Approval of Subzone Status:

Atlantic Veal and Lamb, LLC, Creston and Sterling, OH,
5886–5887

Subzone Status; Approval:

Oerlikon Metco (US) Inc.; Westbury, NY, 5887

Health and Human Services Department

See Centers for Medicare & Medicaid Services

See National Institutes of Health

Homeland Security Department

See Coast Guard

See U.S. Customs and Border Protection

Industry and Security Bureau

NOTICES

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

Official Actions under the Defense Priorities and
Allocations System, 5887–5888

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

International Trade Administration

NOTICES

**Antidumping or Countervailing Duty Investigations, Orders,
or Reviews:**

Certain Crystalline Silicon Photovoltaic Products from
the People's Republic of China and Taiwan, 5910–
5911

Certain Crystalline Silicon Photovoltaic Products from
the People's Republic of China, 5900–5901

Disposable Aluminum Containers, Pans, Trays, and Lids
from the People's Republic of China, 5908–5910

Erythritol from the People's Republic of China, 5895–
5898, 5920–5922

Forged Steel Fittings from Taiwan, 5916–5918

Hydrofluorocarbon Blends from the People's Republic of
China, 5905–5908

Large Power Transformers from the Republic of Korea,
5898–5900

Low Melt Polyester Staple Fiber from the Republic of
Korea, 5892–5894

Mattresses from Malaysia, 5922–5924

Mattresses from Mexico, 5904–5905

Mattresses from Poland, 5914–5916

Polyethylene Retail Carrier Bags from Malaysia, 5924–
5926

Polyethylene Terephthalate Film, Sheet, and Strip from
India, 5890–5891, 5894–5895

Polyethylene Terephthalate Film, Sheet, and Strip from
the United Arab Emirates and the People's Republic
of China, 5891–5892

Ripe Olives from Spain, 5918–5920

Silicon Metal from Malaysia, 5888–5890

Steel Propane Cylinders from Thailand, 5901–5903

Utility Scale Windtowers from Indonesia, 5911–5914

International Trade Commission

NOTICES

Complaint, 5953–5954

**Investigations; Determinations, Modifications, and Rulings,
etc.:**

Calcium Hypochlorite from China, 5955

Certain Vehicle Telematics, Fleet Management, and
Video-Based Safety Systems, Devices, and
Components Thereof, 5954–5955

Justice Department

NOTICES

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

Voice of Customer Survey, 5955–5956

Labor Department

See Employment and Training Administration

See Labor Statistics Bureau

See Occupational Safety and Health Administration

Labor Statistics Bureau

NOTICES

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

Contingent Work Supplement to the Current Population
Survey, 5957–5958

Land Management Bureau

NOTICES

Alaska Oil and Gas Lease Sale Lease Sale:

2026 National Petroleum Reserve, 5964

Requests for Nominations:

National Wild Horse and Burro Advisory Board, 5952–5953

National Highway Traffic Safety Administration**NOTICES**

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

Distraction: Modern Voice Command Interfaces, 5984–5988

National Institutes of Health**NOTICES**

Hearings, Meetings, Proceedings, etc.:

Center for Scientific Review, 5951–5952

National Institute of Allergy and Infectious Diseases, 5951

National Oceanic and Atmospheric Administration**RULES**

Atlantic Highly Migratory Species:

Atlantic Bluefin Tuna Fisheries; Longline Category Quota Transfer, 5855–5858

Fisheries of the Exclusive Economic Zone off Alaska:

Inseason Adjustment to the 2026 Gulf of Alaska Pacific Cod Total Allowable Catch, 5858–5860

NOTICES

Hearings, Meetings, Proceedings, etc.:

Pacific Fishery Management Council, 5926–5928

Permits; Applications, Issuances, etc.:

Marine Mammals; File No. 29044, 5928

Marine Mammals; File No. 29471, 5928

Natural Resources Conservation Service**NOTICES**

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

Advancing Markets for Producers (Formerly Partnerships for Climate-Smart Commodities), 5884–5885

Nuclear Regulatory Commission**NOTICES**

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

Invoice Submissions by Contractors for NRC Contracts/Orders, 5963–5964

Occupational Safety and Health Administration**NOTICES**

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

Access to Employee Exposure and Medical Records, 5959–5960

Aerial Lifts Standard, 5958–5959

Application:

TUV Rheinland of North America, Inc.; Expansion of Recognition, 5962–5963

Nationally Recognized Testing Laboratories:

FM Approvals LLC; Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards, 5960–5962

Personnel Management Office**PROPOSED RULES**

Reduction in Force Appeals, 5861–5877

Pipeline and Hazardous Materials Safety Administration**PROPOSED RULES**

Hazardous Materials:

Harmonization with International Standards, 5996–6071

NOTICES

Hazardous Materials:

Preemption Application from Exxon Mobil Corp., 5988–5989

Postal Regulatory Commission**PROPOSED RULES**

Off-the-Record Procedures, 5880–5881

NOTICES

New Postal Products, 5965

Securities and Exchange Commission**NOTICES**

Application:

Origin Real Estate Credit Fund and Origin Credit Advisers, LLC, 5975

Self-Regulatory Organizations; Proposed Rule Changes:

Cboe Exchange, Inc., 5972

New York Stock Exchange LLC, 5969–5972

NYSE American LLC, 5972–5975, 5978–5979

NYSE Arca, Inc., 5965–5968, 5975–5978

NYSE National, Inc., 5968–5969

NYSE Texas, Inc., 5979–5982

Small Business Administration**RULES**

7(a) Alternative Base Rate Options, 5805

Tennessee Valley Authority**NOTICES**

Meetings; Sunshine Act, 5982

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See National Highway Traffic Safety Administration

See Pipeline and Hazardous Materials Safety Administration

Treasury Department

See Comptroller of the Currency

NOTICES

Designation of the Social Security Administration's Numerical Identification System into Do Not Pay, 5990–5992

U.S. Customs and Border Protection**PROPOSED RULES**

Electronic Export Manifest for Vessel Cargo, 6074–6134

Veterans Affairs Department**NOTICES**

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

Request for Details of Expenses, 5994

Hearings, Meetings, Proceedings, etc.:

Plans to Assess the Current Scientific Literature and

Historical Detailed Claims Data Regarding

Neurodegenerative Outcomes and Selected Military

Environmental Exposures, etc.; Public Listening

Session, 5992–5994

Research Advisory Committee on Gulf War Veterans' Illnesses, 5992

Separate Parts In This Issue**Part II**

Transportation Department, Pipeline and Hazardous
Materials Safety Administration, 5996–6071

Part III

Homeland Security Department, U.S. Customs and Border
Protection, 6074–6134

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.

5 CFR**Proposed Rules:**

351 5861

7 CFR**Proposed Rules:**

958 5877

13 CFR

120 5805

14 CFR**Proposed Rules:**

36 5880

43 5880

45 5880

48 5880

89 5880

91 5880

107 5880

108 5880

119 5880

133 5880

135 5880

137 5880

146 5880

19 CFR**Proposed Rules:**

4 6074

103 6074

113 6074

33 CFR

165 5805

39 CFR**Proposed Rules:**

3010 5880

3012 5880

40 CFR

257 5806

47 CFR**Proposed Rules:**

73 5881

49 CFR**Proposed Rules:**

171 5996

172 5996

173 5996

175 5996

176 5996

178 5996

180 5996

50 CFR

17 5826

635 5855

679 5858

Rules and Regulations

Federal Register

Vol. 91, No. 27

Tuesday, February 10, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

7(a) Alternative Base Rate Options

AGENCY: U.S. Small Business Administration.

ACTION: Notification.

SUMMARY: SBA is introducing alternative base rate options for use with variable interest rate loans made under the 7(a) Loan Program. The alternative base rate options are also available for use under any 7(a) pilot loan programs, unless expressly prohibited.

DATES: Implementation Date: The 7(a) alternative base rates will be effective March 1, 2026, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: For further information, contact Daniel Pische, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, (202) 205-7119 or Daniel.Pische@sba.gov. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711. Lenders can submit questions on the 7(a) Alternative Base Rate options to 7aQuestions@sba.gov.

SUPPLEMENTARY INFORMATION:

I. 7(a) Alternative Base Rate Options

A 7(a) Lender may use a variable rate of interest for guaranteed loans. Currently, a 7(a) Lender may use either the Prime rate or the Optional Peg Rate as the base rate when determining the interest rate for such loans. Per 13 CFR 120.214(c), SBA is permitting the use of three "Alternative Base Rate" options (in addition to the Prime rate and the Optional Peg Rate) for loans made with a variable interest rate under the SBA 7(a) Loan Program: the 5-year Treasury Note Rate, the 10-year Treasury Note

Rate, and the Secured Overnight Funding Rate (SOFR) (collectively, "Alternative Base Rates"). Lenders choosing to use one of the Alternative Base Rates must follow the guidance provided in SOP 50 10 found on sba.gov, which establishes the maximum interest rate allowed for a loan based on its amount. When using one of the Alternative Base Rate options, the maximum interest rate that can be charged by the Lender shall not exceed Prime plus the allowed spread for that loan amount.

Treasury Rates

The 5-year, and 10-year Treasury Note Rates that 7(a) Lenders may use as Alternative Base Rates will be adjusted monthly and based on the market rate at 5:00 p.m. Eastern on the final business day of the previous month.

Secured Overnight Funding Rate (SOFR)

SBA is allowing Lenders to use the Secured Overnight Financing Rate. SBA recognizes that financial institutions use a range of SOFR products to deliver an equivalent reference rate (e.g., 30-day term SOFR and 30-day Average SOFR). Lenders may continue to use their established in-house SOFR reference rates of 30 days or less, as these rates closely correlate with the daily SOFR rate. The amount of interest SBA will pay to a Lender following a default will be calculated based on the daily SOFR rate reported by the Federal Reserve Bank of New York and published by SBA on a monthly basis.

SBA will publish the 7(a) Alternative Base Rate options on SBA's website at <https://catran.sba.gov/ftadistapps/ftawiki/> on a monthly basis, along with the Prime rate and SBA Optional Peg Rate.

Authority: 15 U.S.C. 636(a)(4)(A) and 13 CFR 120.214(c).

Thomas Kimsey,

Associate Administrator, Office of Capital Access.

[FR Doc. 2026-02660 Filed 2-9-26; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2026-0147]

Security Zone; Potomac River and Anacostia River, and Adjacent Waters; Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a security zone along the Potomac and Anacostia Rivers and adjacent waters, at Washington, DC, for activities associated with the U.S. President's State of the Union Address before a Joint Session of Congress. This action is necessary to protect government officials and the public, mitigate potential terrorist acts or other incidents, and enhance public and maritime safety and security immediately before, during, and after this activity. During the enforcement period, entry into or remaining within the zone is prohibited unless authorized by the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR 165.508 will be enforced from 4 p.m. on February 24, 2026 until 2 a.m. on February 25, 2026, for the security zone locations identified in 33 CFR 165.508(a)(6).

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email LCDR Kate Newkirk, U.S. Coast Guard Sector Maryland-National Capital Region (Waterways Management Division); telephone 410-576-2519, email Kate.M.Newkirk@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce regulations in 33 CFR 165.508 for the zone locations identified in paragraph (a)(6) of that regulation from 4 p.m. on February 24, 2026 to 2 a.m. on February 25, 2026. This action is being taken to protect government officials, mitigate potential terrorist acts and incidents, and enhance public and maritime safety and security immediately before, during, and after this event. Our regulation titled "Security Zone; Potomac River and Anacostia River, and adjacent waters;

Washington, DC,” § 165.508(a)(6), specify the location for this security zone as an area that includes all navigable waters described in paragraphs (a)(1) through (a)(3), which includes areas designated as Zones 1, 2, and 3.

- Security Zone 1, paragraph (a)(1); all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by the Francis Scott Key (US–29) Bridge, at mile 113, and bounded to the south by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51′21.3″ N, 077°02′00.0″ W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, including the waters of the Boundary Channel, Pentagon Lagoon, Georgetown Channel Tidal Basin, and Roaches Run.

- Security Zone 2, paragraph (a)(2); all navigable waters of the Anacostia River, from shoreline to shoreline, bounded to the north by the John Philip Sousa (Pennsylvania Avenue) Bridge, at mile 2.9, and bounded to the south by a line drawn from the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50′52.4″ N, 077°01′10.9″ W, including the waters of the Washington Channel.

- Security Zone 3 paragraph (a)(3); all navigable waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn from the Virginia shoreline at Ronald Reagan Washington National Airport, at 38°51′21.3″ N, 077°02′00.0″ W, eastward across the Potomac River to the District of Columbia shoreline at Hains Point at position 38°51′24.3″ N, 077°01′19.8″ W, thence southward across the Anacostia River to the District of Columbia shoreline at Giesboro Point at position 38°50′52.4″ N, 077°01′10.9″ W, and bounded to the south by the Woodrow Wilson Memorial (I–95/I–495) Bridge, at mile 103.8.

During the enforcement period, as specified in § 165.508(b), entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port Maryland-National Capital Region. Public vessels and vessels already at berth at the time the security zone is implemented do not have to depart the security zone. All vessels underway within the security zone should plan to have departed the regulated area by the time the enforcement period begins. To seek permission to transit the zone, the Captain of the Port Maryland-National

Capital Region can be contacted at telephone number (410) 576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing this security zone can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation. If the Captain of the Port or his designated on-scene patrol personnel determines the security zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to suspend enforcement and grant general permission to enter the security zone.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, and marine information broadcasts.

Dated: February 5, 2026.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2026–02594 Filed 2–9–26; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2020–0107; FRL–7814.2–05–OLEM]

RIN 2050–AH36

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 8, 2024, the Environmental Protection Agency established regulatory requirements, including compliance deadlines, for legacy coal combustion residuals surface impoundments and coal combustion residual management units under the Resource Conservation and Recovery Act. This action extends the existing deadlines for owners and operators of active coal combustion residual facilities or inactive coal combustion residual facilities with a legacy coal combustion residual surface impoundment to comply with the facility evaluation requirements for identifying coal combustion residual management units. This action also

extends the existing deadline for owners and operators of coal combustion residual management units to comply with the groundwater monitoring provisions and the remaining provisions for coal combustion residual management units. Finally, EPA is taking final action on several rule amendments that were proposed on January 16, 2025, to correct errors and clarify the coal combustion residual regulations.

DATES: This final rule is effective February 9, 2026.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2020–0107. 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 electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Frank Behan, Office of Resource Conservation and Recovery; Waste Identification, Notice, and Generators Division; Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Mail Code: 5304T; Washington, DC 20460; telephone number: (202) 566–0531; email address: behan.frank@epa.gov; or Taylor Holt, Office of Resource Conservation and Recovery; Waste Identification, Notice, and Generators Division; Environmental Protection Agency; 1200 Pennsylvania Avenue NW, Mail Code: 5304T; Washington, DC 20460; telephone number: (202) 566–1439; email address: holt.taylor@epa.gov. For more information on this rulemaking please visit <https://www.epa.gov/coal-combustion-residuals>.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Executive Summary
 - A. Purpose of the Regulatory Action
 - B. Summary of Final Rule
 - C. Incremental Costs and Benefits
- II. General Information
 - A. Does this action apply to me?
 - B. What action is the Agency taking?
 - C. What is the Agency's authority for taking this action?
 - D. What are the incremental costs and benefits of this action?
- III. Background
 - A. Legacy CCR Surface Impoundment and CCR Management Unit Rule (May 2024)

- B. Legacy Final Rule Corrections Rules (January 2025)
- C. CCR Management Unit Deadline Extension Rule (July 2025)
- IV. Extension of Deadlines for CCR Management Units
 - A. Pending Litigation Over the Legacy Final Rule and Clarifications Regarding the Proposal
 - B. Revisions to the Compliance Deadlines for the Facility Evaluation Report Parts 1 and 2
 - C. Revisions to the Deadlines for the Design and Installation of the Groundwater Monitoring System, Development of the Groundwater Sampling and Analysis Program, and the Initiation of the Combined Detection and Assessment Monitoring Programs
 - D. Conforming Revisions to Other CCR Management Unit Compliance Deadlines
- V. Corrections and Clarifications Proposed on January 16, 2025
 - A. Correcting Typographical Errors in § 257.75(d)(1)
 - B. Correcting Errors in § 257.100(f)
 - C. Correcting Errors in § 257.100(g)
 - D. Clarifying § 257.100(h)
 - E. Correcting Errors in § 257.102
- VI. Rationale for Effective Date
- VII. The Projected Economic Impact of This Action
 - A. Affected Universe
 - B. Baseline Costs
 - C. Costs and Benefits of This Final Rule
- VIII. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Executive Order 14192: Unleashing Prosperity Through Deregulation
 - C. Paperwork Reduction Act (PRA)
 - D. Regulatory Flexibility Act (RFA)
 - E. Unfunded Mandates Reform Act (UMRA)
 - F. Executive Order 13132: Federalism
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
 - J. National Technology Transfer and Advancement Act (NTTAA)
 - K. Congressional Review Act (CRA)

List of Acronyms

APA Administrative Procedure Act
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
CBI Confidential Business Information
CCR coal combustion residuals

CCRMU coal combustion residuals management unit
CFR Code of Federal Regulations
CRA Congressional Review Act
D.C. Circuit United States Court of Appeals for the District of Columbia Circuit
EPA Environmental Protection Agency
FER Facility Evaluation Report
FR Federal Register
GWMCA groundwater monitoring and corrective action
ICR Information Collection Request
NAICS North American Industry Classification System
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
P.E. Professional Engineer
PHI Proprietary Business Information
PRA Paperwork Reduction Act
RCRA Resource Conservation and Recovery Act
RIA Regulatory Impact Assessment
RFA Regulatory Flexibility Act
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
USWAG Utility Solid Waste Activities Group
WIIN Water Infrastructure Improvements for the Nation

I. Executive Summary

A. Purpose of the Regulatory Action

The Environmental Protection Agency (EPA or the Agency) is promulgating this final rule to revise certain regulatory deadlines and make other amendments that apply to owners and operators of coal combustion residual (CCR) units, particularly to owners and operators of CCR management units (CCRMU). In 2015, EPA established requirements for the disposal of CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act of 1976 (RCRA) in landfills and surface impoundments (2015 CCR Rule) [80 FR 21302; April 17, 2015]. This 2015 CCR Rule applied to CCR units at active electric utilities and independent power producers but exempted from regulation similar units at inactive electric utilities and independent power producers. In 2024, the Agency published the Legacy CCR Surface Impoundments Final Rule (Legacy Final Rule) which amended the regulations and established requirements for inactive surface impoundments at inactive electric utilities and independent power producers (legacy surface impoundments) [89 FR 38950; May 8, 2024]. The Legacy Final Rule also

established requirements to address the risks from the direct placement of CCR on the land that was exempt from regulation under the 2015 CCR Rule. This included inactive CCR landfills, as well as CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule (*i.e.*, October 19, 2015). CCRMU can be located at both active and inactive electric utilities and independent power producers. The Legacy Final Rule referred to these newly regulated units as CCR management units.

After publication of the Legacy Final Rule, several issues were raised to EPA by members of the public including industry, non-governmental organizations, and state regulatory agencies. The Agency also identified several errors in the regulatory text of the Legacy Final Rule. In response, EPA issued two separate sets of direct final and proposed rules. The first set of actions published on January 16, 2025 [90 FR 4635 and 90 FR 4707], and the second set of actions on July 22, 2025 [90 FR 34358 and 90 FR 34409]. This current final rule takes final action on a subset of the issues raised in both of these sets of actions. Additional background information on the two proposals can be found in Unit III. of this preamble.

B. Summary of Final Rule

EPA is taking final action on the July 22, 2025 proposed rule [90 FR 34409] to provide additional time for owners and operators of active CCR facilities or inactive CCR facilities with a legacy CCR surface impoundment to complete the Facility Evaluation Report (FER) Part 1 and FER Part 2. This rule also provides owners and operators of CCRMU additional time to comply with the groundwater monitoring requirements and also extends deadlines for other CCRMU requirements for which completion of the FER Part 2 is a prerequisite.

Table 1 summarizes the new compliance deadlines for CCRMU (“New final rule deadlines”), as discussed in Unit IV. of this preamble. The existing deadlines that are being revised by this action (“Legacy final rule deadlines”) are also shown for comparison.

TABLE 1—COMPARISON OF COMPLIANCE DEADLINES FOR CCRMU UNDER THE LEGACY FINAL RULE AND THIS FINAL RULE

40 CFR part 257, subpart D requirement	Description of requirement to be completed	Legacy final rule deadlines	New final rule deadlines
Internet Posting § 257.107	Establish CCR website	February 9, 2026	February 9, 2027.
Facility Evaluation § 257.75 ...	Complete the Facility Evaluation Report Part 1	February 9, 2026	February 9, 2027.

TABLE 1—COMPARISON OF COMPLIANCE DEADLINES FOR CCRMU UNDER THE LEGACY FINAL RULE AND THIS FINAL RULE—Continued

40 CFR part 257, subpart D requirement	Description of requirement to be completed	Legacy final rule deadlines	New final rule deadlines
Facility Evaluation § 257.75 ...	Complete the Facility Evaluation Report Part 2	February 8, 2027	February 8, 2028.
GWMCA § 257.91	Install the groundwater monitoring system	May 8, 2028	February 10, 2031.
GWMCA § 257.93	Develop the groundwater sampling and analysis program	May 8, 2028	February 10, 2031.
GWMCA §§ 257.90–257.95 ...	Initiate detection monitoring and assessment monitoring. Begin evaluating groundwater monitoring data for SSIs over background levels and SSLs over groundwater protection standards.	May 8, 2028	February 10, 2031.
GWMCA § 257.90(e)	Complete the initial annual GWMCA report	January 31, 2029	January 31, 2032.
Closure § 257.102	Prepare written closure plan	November 8, 2028	August 11, 2031.
Post-Closure Care § 257.104	Prepare written post-closure care plan	November 8, 2028	August 11, 2031.
Closure and Post-Closure Care § 257.101.	Initiate closure	May 8, 2029	February 9, 2032.

EPA is also taking final action on some of the rule amendments that were proposed on January 16, 2025 [90 FR 4707] to correct errors and clarify the CCR regulations. These changes include fixing incorrect regulatory text citations and clarifying and adding provisions in

the regulatory text to match what is clearly described in the preamble. EPA is still evaluating the remainder of the amendments proposed on January 16, 2025. Once EPA determines whether to finalize the remaining proposals, EPA will take final action in a subsequent

Federal Register document. Given the number of corrections and revisions discussed in the direct final rule, table 2 provides the disposition of each issue and identifies those issues that are addressed in this final rule.

TABLE 2—DISPOSITION OF ISSUES COVERED IN THE WITHDRAWN JULY 16, 2025 DIRECT FINAL RULE

Unit of preamble in direct final rule	Title of revision	Is EPA taking final action in this final rule?
IV.A	Revisions to § 257.50(d) (Scope and Purpose)	No.
IV.B	Revisions to § 257.53 (Definitions)	No.
IV.C.1., 2., and 4	Revisions to § 257.75 (Requirements for CCRMUs)	No.
IV.C.3	Revisions to § 257.75 (Requirements for CCRMUs)	Yes.
IV.D	Revisions to § 257.80 (Fugitive Dust Requirements)	No.
IV.E	Revisions to § 257.90 (Groundwater Monitoring and Corrective Action Applicability)	No.
IV.F	Revisions to § 257.95 (Assessment Monitoring Program)	No.
IV.G.1., 4., and 9	Revisions to § 257.100 (Inactive CCR Surface Impoundments and Legacy CCR Surface Impoundments)	No.
IV.G.2., 3., 5., 6., 7., and 8	Revisions to § 257.100 (Inactive CCR Surface Impoundments and Legacy CCR Surface Impoundments)	Yes.
IV.H.1. and 2	Revisions to § 257.102 (Criteria for Conducting the Closure or Retrofit of CCR Units)	Yes.

C. Incremental Costs and Benefits

EPA establishes the requirements under RCRA sections 1008(a)(3) and 4004(a) [42 U.S.C. 6907(a)(3) and 6944(a)] without taking cost into account. [*Utility Solid Waste Activities Group, et al. v. EPA (USWAG)* 901 F.3d 414, 448–49 (D.C. Cir. 2018)]. The following cost estimates are presented in the Regulatory Impact Analysis (RIA) and summarized in this preamble for compliance with E.O. 12866 and consistent with OMB Circular A–4.

The RIA estimates that the annualized net cost savings (*i.e.*, cost savings minus disbenefits) of this final rule will be approximately \$7.3–7.5 million per year when discounting at 3%. The RIA also estimates that the annualized net cost savings of this action will be approximately \$24.0–27.0 million per

year when discounting at 7%. Further information on the economic effects of this rule can be found in Unit VII. of this preamble.

II. General Information

A. Does this action apply to me?

This rule may be of interest to electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112. The reference to NAICS code 221112 is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To

determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.50 of title 40 of the Code of Federal Regulations (CFR). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is amending the regulations governing the disposal of CCR in CCR management units, which are codified at 40 CFR part 257, subpart D. CCR management units are “any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit . . .” [40 CFR

257.53]. Specifically, EPA is extending the deadlines for owners and operators of active CCR facilities or inactive CCR facilities with a legacy CCR surface impoundment to complete the FER Part 1 and FER Part 2. This rule also provides owners and operators of CCRMU additional time to comply with the groundwater monitoring requirements, as well as extending deadlines for other CCRMU requirements for which completion of the FER Part 2 is a prerequisite (*i.e.*, the deadlines to complete closures, post-closure care plans, and CCRMU closure initiation).

EPA is also taking final action to correct errors and clarify the CCR regulations. These changes include fixing incorrect regulatory text citations, clarifying and adding provisions in the regulatory text to match what is clearly described in the preamble of the Legacy Final Rule, and improving rule implementation by adding a new section consolidating compliance deadlines for CCRMU.

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

EPA is publishing this rule under the authority of sections 1008(a)(3), 2002(a), 4004, and 4005(a), (d) of the Solid Waste Disposal Act of 1965, as amended by RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6907(a), 6912(a), 6944, 6945(a), and (d).

D. What are the incremental costs and benefits of this action?

EPA establishes the requirements under RCRA sections 1008(a)(3) and 4004(a) [42 U.S.C. 6907(a)(3) and 6944(a)] without taking cost into account. [*Utility Solid Waste Activities Group, et al. v. EPA (USWAG)* 901 F.3d 414, 448–49 (D.C. Cir. 2018)]. The following cost estimates are presented in the Regulatory Economic Assessment (REA) and summarized in this preamble for compliance with OMB Circular A–4 and E.O. 12866. The requirements in this rule do not rely on these cost estimates.

The RIA estimates that the annualized cost savings of this action will be approximately \$8.1–\$9.5 million per year when discounting at 3%. The RIA estimates that the annualized cost savings of this action will be approximately \$25.0–\$30.0 million per year when discounting at 7%. The RIA estimates that the annualized reduction in benefits of this action will be approximately \$0.8–\$2.0 million per year when discounting at 3%. The RIA

estimates that the annualized reduction in benefits of this action will be approximately \$1.3–\$3.3 million per year when discounting at 7%. Overall, the RIA estimates that the net annualized cost savings of this action will be \$7.3–\$7.5 million per year when discounting at 3%, and \$24–\$27 million when discounting at 7%. Further information on the economic effects of this action can be found in Unit VII. of this preamble.

III. Background

A. Legacy CCR Surface Impoundment and CCR Management Unit Rule (May 2024)

On May 8, 2024, EPA published the Legacy Final Rule regulating inactive surface impoundments at inactive facilities (legacy CCR surface impoundments or legacy impoundments) under 40 CFR part 257, subpart D [89 FR 38950]. In addition, the Legacy Final Rule established requirements to address the risks from the direct placement of CCR on the land that was exempt from regulation under the 2015 CCR Rule. This included inactive CCR landfills, as well as CCR surface impoundments and landfills that closed prior to the effective date of the 2015 CCR Rule; the final rule refers to these newly regulated units as CCRMU. The Legacy Final Rule added definitions for legacy CCR surface impoundments and CCRMUs, among other terms. It also established the regulatory requirements applicable to legacy CCR surface impoundments and CCRMUs, which largely consist of requiring compliance with certain existing CCR regulations, along with tailored compliance deadlines.

Owners or operators of an active facility or a facility with a legacy CCR surface impoundment are required to conduct a facility evaluation to identify and delineate any CCRMU at the facility and document the findings in two reports: FER Part 1 and FER Part 2 [§ 257.75(b)]. The FER Part 1 documents the thorough review of readily and reasonably available records regarding where CCR was either routinely and systematically placed on land or where facility activities otherwise resulted in measurable accumulations of CCR on land. The FER Part 2 documents the conclusions of a physical evaluation of the facility to address any data and information gaps identified in FER Part 1. Together, the FER Parts 1 and 2 give a complete picture of the historic use, placement, and the status of CCR at the facility, ultimately identifying any CCRMU of 1 ton or greater onsite. In addition, owners or operators of

CCRMU must comply with the existing requirements in 40 CFR part 257, subpart D for groundwater monitoring, corrective action (where necessary), and in certain cases, closure and post-closure care requirements.

B. Legacy Final Rule Corrections Rules (January 2025)

On January 16, 2025, EPA published a direct final rule [90 FR 4635] and a parallel notice of proposed rulemaking [90 FR 4707] to correct errors and clarify several provisions published in the Legacy Final Rule. Due to the receipt of adverse comment, EPA withdrew the direct final rule on March 20, 2025 [90 FR 13084]. In this **Federal Register** document the Agency refers to this withdrawn action as the “withdrawn corrections direct final rule.” Because the withdrawn corrections direct final rule did not become effective, the Agency is proceeding with a final rule for certain issues based on the proposed rule. See table 2 in Unit I.B. of this **Federal Register** document for a summary of the issues being resolved in this final rule.

As explained in the January 16, 2025 actions, EPA proposed to correct several typographical errors in the regulatory text, correct regulatory text that does not conform to the Agency's stated positions in the Legacy Final Rule preamble, and revise regulatory provisions that, as drafted, have the potential to be ambiguous or confusing. In total the January 16, 2025 actions covered revisions to the following sections of 40 CFR part 257, subpart D: §§ 257.50 (scope and purpose), 257.53 (definitions), 257.75 (requirements for CCRMU), 257.80 (fugitive dust requirements), 257.90 (groundwater monitoring and corrective action applicability), 257.95 (assessment monitoring program), 257.100 (inactive and legacy CCR surface impoundments), and 257.102 (closure of CCR units).

C. CCR Management Unit Deadline Extension Rule (July 2025)

On July 22, 2025, EPA published a direct final rule [90 FR 34358] with a parallel notice of proposed rulemaking [90 FR 34409] that would create an additional option for certain owners and operators to comply with the FER Part 1 requirements and extend compliance deadlines for the remaining CCRMU provisions. On September 4, 2025, EPA withdrew the direct final rule [90 FR 42708] due to the receipt of adverse comment and is proceeding with a final rule based on the proposed rule. EPA refers to this direct final rule as the “withdrawn direct final rule” in the preamble to this final rule. In response

to comments, EPA reopened the comment period for the notice of proposed rulemaking and announced an online public hearing which was held on September 12, 2025 [90 FR 42711]. A transcript of the public hearing is available in the rulemaking docket.¹

Specifically, EPA proposed to (1) establish an additional option to allow the two parts of the FER to be prepared concurrently so long as both reports are submitted no later than the current FER Part 2 deadline; (2) extend the deadline to prepare both FER Part 1 and Part 2 by 12 months; (3) extend the deadline for owners or operators of CCRMU to have designed and installed the groundwater monitoring system, developed the groundwater sampling and analysis plan, collected eight independent samples, and initiated detection and assessment monitoring; and (4) make conforming changes to the remaining CCRMU compliance deadlines to include: (a) the deadline to establish a public CCR website; (b) the deadlines to prepare the closure and post-closure care plans; and (c) the deadline to initiate closure of the CCRMU. [90 FR 34361–34264; July 22, 2025 and 90 FR 34409; July 22, 2025]

IV. Extension of Deadlines for CCR Management Units

The Legacy Final Rule established a two-step process with associated compliance deadlines for owners and operators of active facilities with a currently regulated unit or inactive facilities with a legacy CCR surface impoundment. These owners and operators are required to conduct facility evaluations to confirm whether any CCRMU greater than 1 ton exist on-site and then if so, to delineate the lateral and vertical extent of the CCRMU. Facility evaluations are documented through a FER Part 1 and FER Part 2. Facilities with one or more CCRMU are also subject to requirements and compliance deadlines for groundwater monitoring, corrective action, closure, post-closure care, recordkeeping, notification, and internet posting.

In this action, EPA is extending the deadlines for owners and operators of CCR management units to prepare each part of the FERs by one year. In addition, the Agency is providing additional time for owners and operators of CCR management units to comply with the groundwater monitoring provisions. Complying with the groundwater monitoring provisions requires facilities to complete several actions, including installing the groundwater monitoring system, developing the groundwater sampling

and analysis program, initiating the detection and assessment monitoring programs to include obtaining a minimum of eight independent samples for each monitoring well (e.g., quarterly sampling), and begin evaluating the groundwater monitoring data. In this action, EPA is providing a total of 36 months to complete these groundwater monitoring activities, this time period starts from the deadline for the FER Part 2. Finally, as a consequence of revising the deadline to complete the groundwater monitoring requirement, the Agency is extending the deadlines for several successor provisions including those for preparing the first annual groundwater monitoring and corrective action report, preparing the closure and post-closure care plans, and initiating closure of the CCR management unit. Table 1 in Unit I.B. of this preamble presents the new deadlines for these requirements. The rationale for these revisions is discussed below.

A. Pending Litigation Over the Legacy Final Rule and Clarifications Regarding the Proposal

1. Request for Extensions in Response Resultant to Pending Litigation Over the Legacy Final Rule

Several commenters supported extending the CCRMU deadlines due to the pending litigation [*i.e.*, *City Utilities of Springfield v. EPA*, Case No. 24–1200 (D.C. Cir.)] and EPA's broader reconsideration of the Legacy Final Rule. The comments received are discussed in Units IV.B., IV.C., and IV.D. of this preamble. In summary, these commenters stated that an extension is appropriate given the current abeyance in the litigation and EPA's stated intent to reconsider the Legacy Final Rule requiring a new round of notice-and-comment rulemakings.

EPA disagrees that either the pending litigation or EPA's reconsideration of the Legacy Final Rule provides a basis for extending the FER Part 1 and FER Part 2 deadlines. [See, *e.g.*, *Air Alliance Houston v. EPA*, 906 F. 3d 1049 (D.C. Cir. 2018)]. However, for other reasons discussed in Units IV.B., IV.C., and IV.D. of this preamble, the Agency is extending the CCRMU deadlines.

2. Clarifications Regarding the Proposal

Several commenters claimed that the proposed rule for this action was unclear whether the Agency intended to propose extensions identical to those in the withdrawn direct final rule or whether it intended to extend each deadline by 12 months as provided in

table 1 of the proposed rule [90 FR 34411].

In the proposed rule, the Agency not only proposed the same deadline extensions discussed in the direct final rule but also sought comment on an additional alternative that would extend the deadlines to prepare both FER Part 1 and Part 2 by 12 months. Therefore, the Agency has considered all relevant comments received in both the withdrawn direct final rule and the proposed rule. See Units IV.B., IV.C., and IV.D. of this preamble for further responses to comment.

B. Revisions to the Compliance Deadlines for the Facility Evaluation Report Parts 1 and 2

As currently codified in 40 CFR part 257, subpart D, owners and operators of active and inactive facilities with one or more regulated CCR unit(s) are required to conduct a facility evaluation to confirm whether any CCRMU of 1 ton or greater exist on-site and if so, delineate the lateral and vertical extent of the unit(s). The Legacy Final Rule adopted a two-part facility evaluation process with two separate professional engineer (P.E.)-certified reports and compliance dates. The FER Part 1 includes the results of the available information collection and evaluation and has a compliance deadline of February 9, 2026 (*i.e.*, 15 months from the effective date of the Legacy Final Rule). The FER Part 2 addresses data and information gaps through a physical evaluation of the facility and has a compliance deadline of February 8, 2027 (*i.e.*, 12 months from the deadline for the FER Part 1). Together, the FER Part 1 and Part 2 give a complete picture of the historic use, placement, and the status of CCR at each facility, ultimately identifying and delineating the lateral and vertical extents of any CCRMU onsite.

1. Legacy Proposed Rule

In the Legacy Proposed Rule [88 FR 32020–32023; May 18, 2023], EPA proposed to require owners or operators of active or inactive facilities with one or more regulated CCR unit(s) to conduct a facility evaluation to confirm whether any CCRMU exist on-site and if so, delineate the lateral and vertical extent of the unit(s). EPA proposed that facilities prepare one report, to be completed in two consecutive steps, with a single deadline. As proposed, the first step would consist of a thorough review of available records in combination with a physical facility inspection and any necessary field work to fill any data gaps from the review of available records. The second step of the

facility evaluation would be to generate a professional engineer-certified FER to document the findings of the facility evaluation. The proposed compliance deadline for the completion of the FER was no later than three months after the effective date of the final rule. The following paragraph summarizes the comments received during this rulemaking that are pertinent to this final rule.

Many commenters disagreed with EPA's proposal of a two-step process documented in a single report. Commenters stated that the FER process should not be documented in a single report and that these requirements should more closely follow the investigative process developed under the RCRA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs. The commenters on the legacy proposed rule suggested that separating the information collection requirements from the physical evaluation requirements would provide a more thorough evaluation of the existing available information to better inform the physical evaluation to fill data gaps and properly identify CCRMU. [89 FR 39054; May 8, 2024] They instead suggested EPA split the information collection requirements from the physical evaluation requirements, stating the separation would provide a more thorough evaluation of existing available information to better inform the physical evaluation to fill data gaps and properly identify CCRMU. Commenters also stated that the proposed FER deadline was infeasible and did not allow sufficient time to gather the required information and conduct a physical inspection. Most commenters cited concerns regarding the accessibility of historic information or data, difficulty locating off-site record storage, the possible extensive volume of information, the possible iterative nature of field work and sampling, the impact of seasonal disruptions to field work, the lack of qualified field personnel and the timing to acquire their services through contracts. Multiple commenters also suggested allowing significantly more time to complete individual aspects of the FER requirements.

2. Legacy Final Rule

In responses to these comments, the Legacy Final Rule adopted a two-part facility evaluation process with two separate P.E.-certified reports and compliance deadlines [89 FR 39054–39059; May 8, 2024]. The FER Part 1 includes the results of the available

information collection and evaluation and has a compliance deadline of February 9, 2026. The FER Part 2 addresses data and information gaps through a physical evaluation of the facility and has a compliance deadline of February 8, 2027. Together, the FER Part 1 and Part 2 will give a complete picture of the historic use, placement, and the status of CCR at each facility, ultimately identifying and delineating the lateral and vertical extents of any CCRMU onsite.

When determining the final compliance deadlines for the FERs, EPA relied heavily on the information provided by commenters citing the shortages and backlogs of qualified contractors, increased strain on those contractors related to the number of CCR units complying with the CCR rule simultaneously, difficulty accessing and reviewing historical documentation, potential seasonal disruptions, and time needed to perform quality control and quality assurance. After considering the information provided by the commenters, EPA extended the compliance dates and separated the FER into two parts with separate deadlines to prepare the reports. Specifically, the final rule required FER 1 to be completed by February 9, 2026 (*i.e.*, 15 months from the effective date), and FER 2 to be completed by February 8, 2027 (*i.e.*, 12 months from the deadline of the FER Part 1 and 27 months from the effective date).

3. Direct Final Rule (Now Withdrawn) and Parallel Proposal Rule

After the Legacy Final Rule went into effect on November 8, 2024, some members of the regulated community informed the Agency that they were facing challenges that would impact their ability to comply with specific compliance deadlines for CCRMU. The information that EPA received from the regulated community is available in the rulemaking docket and summarized below. The information provided by facilities includes that several companies are having difficulties preparing the FER Part 1 report by the current deadline because of difficulty in obtaining, accessing, and reviewing the historic documentation. The feedback provided to EPA includes that:

- It is taking facilities longer than expected to process voluminous historical records and information. One company with multiple facilities explained that it has records stored in various locations in different states, including off-site warehouses, filing cabinets at office and plant locations, and electronic records stored on various servers or in a file database system. This

company indicated that it has located over a quarter million boxes of records stored at ten off-site warehouses, as well as over 5.8 million electronic records. Another company described locating nearly 600 boxes and 30 file cabinets of documents resulting in approximately 30,000 pages and nearly 4 gigabytes of information in need of review and assessment. Other facilities have stated that they have collected tens of thousands or hundreds of thousands of documents thus far. Companies have reported that searching through these records is time consuming because of the sheer volume of information that must be reviewed. Additionally, narrowing the search is often complicated because the description of the contents of the boxes are vague or not detailed.

- Identifying relevant records maintained in electronic formats has presented challenges. These companies reported that in many cases electronic records do not contain many useful attributes on which to search so it has been difficult to identify what documents may provide useful information. One company described the difficulty of identifying relevant files that have been digitized and preserved on a hard drive for a facility that operated for 40 years. Another company stated that operating systems hosting documents have changed over time (*e.g.*, software systems for document management and storage), as well as some information being stored on out-of-date electronic filing systems. Moreover, some companies have found that subsequent conversions to newer operating systems were not seamless, thus creating issues in retrieving data. Finally, a company discussed the challenges with accessing and reviewing microfiche information, specifically that the process of digitizing microfiche information is time consuming.

- Multiple companies have found that many of the historical engineering and construction documents and drawings stored in boxes at offsite warehouses are in poor condition. These companies reported that documents are torn or otherwise damaged, making them illegible or difficult to use. Older drawings or documents that have been scanned and saved electronically have poor resolution or are faint and difficult to read. These companies have stated that document condition and completeness has slowed the review process.

- Several commenters discussed that there is not sufficient time provided in the current FER Part 1 deadline for facilities owned and operated by affiliate companies to collaborate. These

companies further stated that such coordination is time-consuming, but necessary to ensure uniformity across different companies and facilities.

- Several companies are using contractors to complete the facility evaluation process, including the drafting of the report documenting compliance with part 1 of the facility evaluation requirements (*i.e.*, FER Part 1). These companies have identified shortages and backlogs in qualified contractors resulting from the simultaneous demand for contractors.

To address these challenges, EPA published the now withdrawn direct final rule [90 FR 34358; July 22, 2025 and 90 FR 42708; September 4, 2025] with a parallel proposed rule [90 FR 34409]. The direct final rule would have allowed facilities to complete the FER Part 1 by the FER Part 2 deadline but would not have extended the FER 2 deadline. The withdrawn direct final rule offered this option because, in reviewing the information submitted by these facilities, EPA noted that many of the specific difficulties presented to the Agency primarily related to the information gathering tasks required under FER Part 1. In addition, some companies suggested that one way to address these concerns was to provide companies with additional flexibility to complete the FER Part 1 by the FER Part 2 deadline. This suggestion was also consistent with the Agency's original proposal for the Legacy Rule, which as stated above commenters generally did not support at that time.

In the withdrawn direct final rule [90 FR 34358; July 22, 2025], EPA concluded that the information that had been provided by the companies did not provide sufficient support for a direct final rule extending the FER Part 2 deadlines because many of the specific difficulties presented to the Agency primarily related to the information gathering tasks required under FER Part 1. This conclusion was made despite that EPA stated in the withdrawn direct final rule that the activities involved in achieving compliance with the FER Parts 2 (*e.g.*, coordinating with local, state, and federal authorities; collecting samples; conducting field work; receiving lab results) are susceptible to factors outside of a facility's control (*e.g.*, extreme weather events, shortages of qualified contractors) and warrant greater flexibility [90 FR 34362; July 22, 2025], that (2) the FER Part 1 is the work plan is required to conduct the FER Part 2 facility evaluation work [90 FR 39054; May 8, 2024], and (3) that merging the deadlines would remove the transparency intended in the Legacy Rule by allowing the public the

opportunity to see the work plan for the FER Part 2 prior to the completion of the FER Part 2 work [90 FR 39054; May 8, 2024].

In the parallel proposal published on July 22, 2025 [90 FR 34410], EPA also sought comment on an alternative proposal to resolve the challenges discussed above. Specifically, the EPA sought comment on whether to extend each of the FER compliance deadlines by 12 months, even though the Agency stated that the regulated community had not substantiated the need to extend the FER Part 2 deadline in addition to the FER Part 1 deadline. This alternative proposal coupled a 12-month extension with the option to allow the two parts of the FER to be prepared concurrently. This alternative proposal would have allowed facilities to either (1) complete the FER Part 1 by February 8, 2027 and the FER Part 2 by February 8, 2028 or (2) complete FER Parts 1 and 2 by February 8, 2028. Under this alternative proposal, the requirement to prepare a report documenting compliance with part 1 of the facility evaluation (*i.e.*, FER Part 1) would remain. As discussed above in this section, this alternative proposal was based on feedback EPA received that some owners and operators found the FER Parts 1 and 2 compliance deadlines infeasible and that an extension of 12 months for both FER Part 1 and Part 2 was necessary to provide sufficient time for data and information collection, review, field work, and completion of the reports given the challenges mentioned above.

4. Summary of Comments Received and Rationale for Final Rule

The Agency received many comments on the contemplated changes to the FER deadlines discussed in the withdrawn direct final rule and parallel proposed rule [90 FR 34358 and 34409; July 22, 2025]. This Unit of the preamble contains EPA's summary of the comments.

The Agency received many comments in response to the withdrawn direct final rule and parallel proposed rule [90 FR 34358 and 34409; July 22, 2025] which stated that there is a need for at least a 12-month extension for each of the FERs. The comments supporting the 12-month extensions generally stated that facility owners and operators have been diligently undertaking the necessary facility evaluations to identify CCRMUs at their regulated sites but are unable to meet the deadlines for the preparation of the FER Parts 1 and 2. These commenters provided the following information to support the need for the extensions: assertions that approximately half of the regulated

facilities are unable to complete the FER process in accordance with the current timeframes due to voluminous records that need to be reviewed, contractor shortages and backlogs of qualified contractors, coordination concerns regarding contractors working at facilities, coordination issues pertaining to affiliate companies working to ensure uniformity across the different companies and facilities, and inadequate time to delineate CCRMU with uncertain boundaries. One commenter stated that CCRMUs are unlike the CCR units regulated under the original 2015 regulations, because for the most part those units had well-defined and discrete boundaries, while CCRMU can be areas of historic placement that lack clear delineation and thus the amount of work is greatly increased for these units. One commenter supported the extensions stating that the extensions are proactive steps to ensure that CCRs are being managed properly by recognizing the operational challenges that utilities are facing, but further stated that these extensions should not turn into a loophole of continued delays and requested firm and enforceable deadlines. Similarly, another commenter supported the extensions stating that the control of CCR needs to be more serious, and people need to be more attentive to it, therefore it is very important to have the time to do proper safety protocols and regulations. Some commenters stated that the extensions will have no adverse environmental effects and others positioned that the extensions are necessary to protect the environment and human health. Another supporting commenter stated that the proposed extensions do not in any way jeopardize human health and the environment and requested common sense revisions that better balance protecting human health and the environment with American industry.

Some commenters specifically supported the extension of FER Part 2, in addition to the extension to FER Part 1. These commenters supported the position that the FER Part 1 and Part 2 cannot be completed concurrently and were designed to be consecutive steps. These commenters further stated that FER Part 1 is intended to inform the FER Part 2, that FER Part 2 is intended to address any gaps identified in the FER Part 1 process, and that the FER Part 1 report must include a work plan for the FER Part 2 process. These commenters concurred with EPA's position in the Legacy Final Rule, that it is appropriate to provide 12 months

following the FER Part 1 for the FER Part 2 process.

Some of the commenters provided information to demonstrate that there are numerous factors outside of a facility's control that can impact its ability to comply with the requirements by the existing deadlines. These reasons include that: facilities need time to install equipment or infrastructure to conduct sampling (*e.g.*, drilling boreholes, laboratory delays); there may be delays from significant weather events which could create unsafe conditions or otherwise make borehole locations temporarily inaccessible; time is needed to have qualified personnel to carry out necessary fieldwork; time is needed to account for permitting or approval requirements to include federal seasonal restrictions for endangered species as well as state and local requirements for permits and formal approvals; and facilities may have issues accessing CCRMUs if confined in multiple areas by streams, public roads, railroad rights-of-way, and adjacent properties not owned by the regulated facilities. Some commenters stated that the FER Part 2 also includes complex and time-intensive tasks which are susceptible to the same contractor and weather delays as the FER Part 1. These commenters discussed that to complete the FER Part 2 the regulated entities must conduct a comprehensive on-site inspection of the entire property, and that while it may be a straightforward process for some facilities, other facilities have complicating factors such as size (*e.g.*, some facilities span several hundred acres), site complexity (*e.g.*, undeveloped lands and natural features that limit access (*i.e.*, wetlands, steep slopes, densely vegetated areas)), and the number of regulated units requiring evaluation. These commenters provided their opinion that without the corresponding extension to the FER Part 2, the flexibility intended by the FER Part 1 extension would be significantly undermined. One commenter also stated that identification and delineation of the CCRMUs is not necessarily a "one-and-done" exercise, providing that field investigations verify information data gaps which then may need additional follow-up sampling and investigations that are also susceptible to delays affiliated with weather and permitting.

But numerous other commenters broadly opposed the extensions and many of these commenters provided reasons for their opposition. Some opposing commenters requested that the compliance dates be shortened to end CCR accumulation in unlined surface impoundments. Some of these

commenters opposing the extensions stated that 91% of power plants that have coal ash pits are contaminating groundwater and some of these commenters provided reference to the supporting industry data. Similarly, many of these commenters cited concerns about delays in the process endangering or continuing to contaminate sources of drinking water for numerous communities throughout the country. Some of these commenters were also concerned about impacts to ecosystems, the environment, surface waters, and recreational uses. Some commenters expressed concern about specific facilities affecting or potentially affecting their communities and stated that CCRMUs have contaminated or may contaminate drinking water in exceedance of the federal drinking water standards or surface waters in a way that would otherwise affect human health and/or the environment. Other opposing commenters expressed concerns with the costs of cleaning up contamination, improving drinking water, and medical care that will be incurred by extending the deadlines. Similarly, another commenter opposed the extensions for economic reasons, stating that the fossil fuel damages exceed the gross domestic product of the country. Many commenters expressed specific concerns about metals and other toxic coal ash constituents leaching into groundwater and surface water effecting human health and the environment. Some of these commenters referred to EPA risk assessments for these constituents. Many opposing commenters discussed that EPA had already extended deadlines in the Legacy Final Rule and feel that industry has been given enough time. Some commenters requested that EPA dismiss comments made by the regulated industry. Several opposing commenters pointed to the units regulated under the 2015 CCR Rule and the 100% compliance rate to install groundwater monitoring systems, perform the initial rounds of assessment monitoring, and issue their reports on time as evidence that extensions are not needed for CCRMUs. One of these commenters disputed claims made by industry that they need more time to complete the FERs and stated that the EPA's Proposed rule docket entries for these comments fail to provide evidence of the existence, scope, or impact of the alleged shortage of contractors; that the deadlines should not be extended because even if large companies have more documents, they also have more resources; and disputes that a \$1.14M estimate for the sampling events at one

facility is unsubstantiated, further pointing out that RCRA sections 1008(a)(3) and 4004(a) [42 U.S.C. 6907(a)(3) and 6944(a)] prohibit EPA from taking costs into account. Many of the opposing commenters expressed concern that the toxins in coal ash are harming human health and negatively impacting communities and workers. One of these commenters stated that communities near coal plants will likely be harmed by the proposed rule, since it delays investigation, closure and cleanup of these areas of toxic waste.

The Agency has considered the comments and information provided and is convinced that the existing deadline for the FER Part 1 report does not provide sufficient time for facilities to comply because of difficulty in obtaining, accessing, and reviewing historical documentation. EPA's existing deadline assumed that owners and operators could evaluate that historical documentation by the deadline of February 9, 2026. However, it is evident that EPA underestimated the timeline to complete these tasks, particularly considering that many of these power plants have operated for decades requiring these owners and operators to identify and evaluate voluminous historical records. The Agency agrees with commenters that these provisions are more complicated than the original 2015 regulation's provisions, because most of the existing CCR units which complied with the 2015 regulations had well-defined and discrete boundaries. By contrast CCRMU are generally areas of historic placement and more work is sometimes necessary for identification and delineation.

A thorough evaluation of the historical records, such as engineering drawings or other construction-related information of the CCRMU as part of the FER Part 1 process is an important step informing subsequent tasks including the facility inspection as part of the FER Part 2 and installation of the groundwater monitoring system. Providing the necessary time to review and assess available historical records will better inform the physical facility inspection and any necessary field work as part of the FER Part 2. Furthermore, as EPA acknowledged in the Legacy Final Rule, proper site characterization is critical to designing the groundwater monitoring system for the CCRMU [89 FR 39064; May 8, 2024]. While EPA anticipates that some facilities will have adequate information for site characterization, many of these facilities, especially inactive facilities, may need to conduct more extensive site reconnaissance and field work to

obtain the necessary information due to the widespread use of noncontainerized CCR across facilities. Providing the necessary time to properly conduct the FER Part 1 will better ensure that all available relevant records are identified. EPA further recognizes that groundwater monitoring systems that are designed based on inadequate data are more likely to be unable to properly monitor groundwater quality coming from the unit and therefore not protective of human health and the environment.

The Agency further agrees that the FER Part 1 and Part 2 were designed to be consecutive steps. Since the FER Part 2 is intended to address any gaps identified during the FER Part 1 process and that the FER Part 1 report must include a workplan to guide the FER Part 2 process, the Agency is reaffirming its position taken in the Legacy Final Rule that it is appropriate to provide 12 months following completion of the FER Part 1 for the FER Part 2 process. EPA discussed in the withdrawn direct final rule that FER Part 2 activities (*e.g.*, coordinating with local, state, and federal authorities; collecting samples; conducting field work; and receiving lab results) are susceptible to factors outside of a facility's control (*e.g.*, extreme weather, contractor shortages, and permitting or approval delays) and need additional flexibility to be completed by their deadlines [90 FR 34361]. The FER Part 2 requires that the owners and operators conduct a physical evaluation of their facilities, including where necessary field sampling [§ 257.75(d)(1)]. More specifically, the owners and operators are required to conduct the following activities which may require field work: (1) § 257.75(d)(1)(iv) requires a description of the physical and engineering properties of the foundation and abutment materials on which each CCRMU was constructed. This may require that facilities conduct field sampling events. (2) § 257.75(d)(1)(vi) requires evidence of structural instability of each CCRMU. This may require that facilities conduct structural integrity testing. (3) § 257.75(d)(1)(viii) requires the size of each CCR management unit, including the general lateral and vertical dimensions and an estimate of the volume of CCR contained within the unit. This may require field sampling and resampling to fully verify. (4) § 257.75(d)(1)(viii) requires identification of the types of CCR in each CCRMU. This may require field sampling of each CCRMU to verify constituents.

Since the FER Part 2 requires varying levels of field work in multiple climates,

the Agency agrees that owners and operators of facilities may encounter factors outside of their control during the FER Part 2 process that could jeopardize their ability to meet the compliance deadline. These include that: facilities need time to install equipment or infrastructure to conduct sampling (*e.g.*, drilling boreholes, laboratory delays); there may be delays from significant weather events which could create unsafe conditions or otherwise make borehole locations temporarily inaccessible; time is needed to have qualified personnel to carry out necessary fieldwork; time is needed to account for permitting or approval requirements to include federal seasonal restrictions for endangered species as well as state and local requirements for permits and formal approvals; facilities may have issues accessing CCRMUs when confined in multiple areas by streams, public roads, railroad rights-of-way, and adjacent properties not owned by the regulated facilities; and there may be other site specific factors such as size (*e.g.*, some facilities span several hundred acres), site complexity (*e.g.*, undeveloped lands and natural features that limit access (*i.e.*, wetlands, steep slopes, densely vegetated areas), and the number of regulated units requiring evaluation. The Agency agrees with commenters who stated that industry did not fully substantiate the shortage of contractors. However, the Agency believes that some facilities may be experiencing staffing difficulties and finds that the other factors discussed in this paragraph may warrant additional time to ensure protection of human health and the environment. The Agency anticipates that some of the more complex facilities will need more time to fully delineate the lateral and vertical extent of the CCRMUs. EPA must ensure that the facilities nationwide can achieve regulatory compliance and finds that these factors warrant additional time to achieve compliance. And since at this time CCRMU requirements are not within a tailored site-specific permit program, the EPA finds that these extensions are required to provide adequate time for all facilities to meet the requirements. EPA acknowledges that the FER Part 2 requires field work that may require facilities to obtain federal, state, and local permits; install equipment or infrastructure to conduct sampling; procure the appropriate expertise; and various other region- and season-specific items that may jeopardize the ability to comply by the existing deadline. The Agency did not appreciate that these factors which are

outside of the facilities control would inhibit compliance with the FER Part 2 deadline when it published the now withdrawn direct final rule [90 FR 34358] and the accompanying proposed rule [90 FR 34409; July 22, 2025].

Further, the Agency agrees with the commenters that expressed the importance of adequate time to properly manage the CCRMUs, as well as the numerous commenters who are concerned about impacts from CCRMUs to human health and the environment. The Agency appreciates the concerns submitted by commenters who are troubled by the potential negative impacts that these extensions may have on communities, groundwater, surface water, human health, and the environment. These extensions are necessary to limit human exposure of any metals and toxins in the coal ash. As EPA explained above, providing the necessary time to conduct each step of the facility evaluation process will ensure the proper delineation of each CCRMU, which in turn will better support the design and installation of a groundwater monitoring network protective of human health and the environment. The Agency believes that providing these extensions protects the American public. EPA will continue to evaluate the CCRMU regulatory framework to ensure that chemicals and other exposures from CCRMU comply with RCRA.

The Agency disagrees with commenters advocating to take cost into account as a factor when establishing these deadlines because EPA establishes the requirements under RCRA sections 1008(a)(3) and 4004(a) [42 U.S.C. 6907(a)(3) and 6944(a)] without taking cost into account. [*USWAG*, 901 F.3d at 448–49]

In this final rule, EPA is extending the deadlines for owners and operators of CCRMU to prepare each part of the FER by one year. The Agency finds this extension is supported by the information submitted by the commenters as discussed above and finds that this one-year extension for both the FER Part 1 and Part 2 is sufficient based on the representations by the majority of commenters from the regulated community that a 12-month extension will address their concerns. Accordingly, the revised deadline to complete FER Part 1 is February 9, 2027, and the deadline for FER Part 2 is February 8, 2028. The revised deadlines to complete FER Part 1 and FER Part 2 are codified in § 257.75(c)(1) and (d)(1), respectively.

5. Option To Allow the Two Parts of the FER To Be Prepared Concurrently

As discussed above, in both the July 22, 2025 direct final rule (now withdrawn) and the parallel proposed rule [90 FR 34358 and 34409], EPA offered a regulatory option under which a facility could prepare both FER Part 1 and Part 2 by February 8, 2027 (*i.e.*, the existing deadline for FER Part 2). This option of a single deadline for FER Part 1 and Part 2 (as opposed to two separate deadlines) allowed flexibility to complete tasks, such as reviewing historical documentation and conducting field work to confirm the presence of CCRMU. EPA explained that this option would address many of the specific difficulties presented to the Agency, which primarily related to the information gathering tasks required under FER Part 1. EPA also reasoned that the activities involved in achieving compliance with the facility evaluation requirements (FER Parts 1 and 2) (*e.g.*, coordinating with local, state, and federal authorities; collecting samples; conducting field work; receiving lab results) are susceptible to factors outside a facility's control (*e.g.*, extreme weather events, shortages of qualified contractors, and permitting or approval delays), and therefore warrant greater flexibility. Additionally, required activities can be restricted depending on the time of year and the location of the facility (*e.g.*, due to seasonality, protected species, site clearing restrictions). Because all the CCRMU requirements build upon the FER, EPA must ensure that facilities nationwide can achieve regulatory compliance by the deadline. EPA believed that utilizing a single deadline for the facility evaluation requirements would allow facilities to make reasonable accommodations for facility-specific challenges in a way that the current sequential deadlines do not.

Under both the withdrawn direct final rule and the proposed rule, compliance with the existing provisions (that require completion of the FER Parts 1 and 2 by separate deadlines) would have remained as an option because most commenters on the legacy proposed rule had raised concern with a two-step process documented in a single report, and suggested that EPA split the information collection requirements from the physical evaluation requirements to provide a more thorough evaluation of existing available information to better inform the physical evaluation to fill data gaps and properly identify CCRMU. EPA believed that establishing an alternative compliance option would address

concerns and provide facilities with flexibility to account for their individual circumstances.

The Agency received a couple comments opposing the additional regulatory option to allow concurrent submission of the FER Part 1 by the FER Part 2 deadline. One commenter provided that further delays to reporting for coal ash dumps and landfills will inevitably slow cleanup, and communities will be exposed to years more toxic ash pollution. Another commenter specifically opposed the option, cited the sequential nature of the FERs, and recommended that the Agency extend the FER Part 1 and Part 2 deadlines each by 12 months. This commenter stated that simply collapsing the FER Part 1 and Part 2 deadlines would not provide any actual relief because the FER Part 2 must build directly on the findings of the FER Part 1. This commenter further discussed that the regulatory text and structure confirm that two reports are intended and provided the example that FER Part 1 identifies and narrows the areas of a facility that an owner and operator must investigate during the second part of the FER Process. Both opposing commenters stated concern that merging of the FER deadlines will remove the transparency that was intended by the separate compliance dates and allowed the public the opportunity to see the work plan (*i.e.*, the FER Part 1 report).

Conversely, other commenters generally supported the proposed rule and therefore the additional regulatory option which would allow concurrent submission of the FER Parts 1 and 2. The Agency received several comments that specifically support the concurrent submission of the FER Part 1 with FER Part 2; however, many of these commenters further explained that there is a need for an extension to FER Part 2 because the FERs are sequential and cannot be completed concurrently. The commenters who specifically supported the option for concurrent submission of the FERs provided the following justifications: that eliminating the separate phase 1 and phase 2 and requiring a combination report just makes sense because a single report would be more concise and will not delay the cleanup schedule; that affected facilities would appreciate the flexibility to choose a combined compliance deadline that can account for budget cycles, delays bid specifications, and the ability provide qualified contractors and equipment; and that it can hardly be viewed as controversial since it would still require the FER Part 2 to be completed within the timeline established in the Legacy

Final Rule. The commenters who requested extensions for FER Part 2 based on the sequential nature of the FERs stated that the FER Part 1 and Part 2 cannot be completed concurrently and were designed to be consecutive steps. These commenters further stated that FER Part 1 is intended to inform FER Part 2, that FER Part 2 is intended to address any gaps identified in the FER Part 1 process, and that the FER Part 1 report must include a work plan for the FER part 2 process. Many of these commenters concurred with the EPA's position in the Legacy Final Rule, that it is appropriate to provide 12 months following the FER Part 1 for the FER Part 2 process.

The Agency has considered the information provided by these commenters and agrees that the FER Part 1 and Part 2 are sequential steps, that the option for concurrent FERs does not provide relief for the FER Part 2 deadline, that allowing concurrent submission of the FER Part 1 by the FER Part 2 deadline will delay reporting (*i.e.*, the internet posting of the FER Part 1 as required per § 257.107), and that it is appropriate to provide 12 months to complete the FER Part 2 after completion of the FER Part 1. Therefore, the final rule does not allow concurrent submission of the FER Parts 1 and 2. As discuss in the previous paragraph, the Agency found that many of the commenters who supported the option for concurrent submission of the FERs often also provided evidence that was contrary to the option while stating the need for additional time for the FER Part 2 report. Further, the Agency disagrees with the suggestion that there should only be a single FER report required or that there should be a single deadline for the FER Part 1 and the FER Part 2 because it is contrary to many comments received in response to the legacy proposed rule and this proposed rulemaking which state that the activities required to the complete the reports are sequential, that the FER Part 1 report is necessary to inform the FER Part 2 process, and that the process should more closely follow the investigative process developed under the RCRA and CERCLA processes. The Agency finds that the majority of comments received in this rulemaking affirm the determinations in the Legacy Final Rule [89 FR 390540], that the two-step approach to facility evaluation will reduce the need for rework and the overall burden for both facility owners or operators and contractors who may be hired to complete this work. As EPA stated in the Legacy Final Rule, facilities must conduct a physical site inspection

of the entire facility as part of the FER Part 2 [89 FR 39057]. This physical site inspection must consist of a visual inspection of the entire facility to look for evidence that CCR is currently being managed on the land to include addressing all data gaps identified as part of the FER Part 1. Additionally, EPA again concludes that this approach increases transparency by allowing the public the opportunity to see the work

plan developed by the owner or operator. If the Agency had proceeded with finalizing the single deadline for the submission of both FER Part 1 and 2, the public may not have seen the FER Part 2 work plan until after the FER Part 2 work was already completed. Therefore, the Agency is not proceeding with the additional option to allow the two parts of the FER to be prepared concurrently.

6. Summary of Deadlines for FER Part 1 and Part 2

In summary, EPA is extending the deadlines for owners and operators of CCRMU to prepare FER Part 1 and FER Part 2 by one year. Table 3 shows the new deadlines to complete these activities.

TABLE 3—COMPARISON OF COMPLIANCE DEADLINES FOR CCRMU UNDER THE LEGACY FINAL RULE AND THIS FINAL RULE

40 CFR part 257, subpart D requirement	Description of requirement to be completed	Legacy final rule deadlines	New final rule deadlines
Facility Evaluation § 257.75(c)(1) ...	Complete the Facility Evaluation Report Part 1.	February 9, 2026	February 9, 2027.
Facility Evaluation § 257.75(d)(1) ..	Complete the Facility Evaluation Report Part 2.	February 8, 2027	February 8, 2028.

C. Revisions to the Deadlines for the Design and Installation of the Groundwater Monitoring System, Development of the Groundwater Sampling and Analysis Program, and the Initiation of the Combined Detection and Assessment Monitoring Programs

The Legacy Final Rule established a new requirement in § 257.90(b)(3) for owners or operators of CCRMU to install a groundwater monitoring system, develop a groundwater sampling and analysis program to include selection of the statistical procedures to be used for evaluating groundwater monitoring data, collect eight independent samples, and initiate detection and assessment monitoring no later than May 8, 2028. This existing deadline of May 8, 2028 is 42 months from the effective date of the Legacy Final Rule (November 8, 2024 to May 8, 2028) and is 15 months after the existing deadline for owners and operators to complete FER Part 2 (February 8, 2027 to May 8, 2028) [89 FR 39061–69; May 8, 2024]. EPA explained in the Legacy Final Rule that the May 8, 2028 deadline took into account several considerations, including: the potential size of the CCRMU universe; seasonality; required local and state approvals to clear vegetation or drill wells; need to coordinate with local or state regulatory authorities; the national labor shortage and contractor and laboratory backlogs; and the impact of overlapping compliance deadlines. Overall, EPA found the information provided regarding the infeasibility of the groundwater monitoring compliance deadlines in the proposed Legacy Rule convincing, therefore promulgated the existing deadline of May 8, 2028, for facilities to comply with the

groundwater monitoring requirements of § 257.90(b)(3).

On July 22, 2025, EPA issued a direct final rule along with a parallel proposed rule to revise the groundwater monitoring compliance deadlines [90 FR 34358 and 34409, and 90 FR 42708; September 4, 2025]. The direct final rule was subsequently withdrawn on September 4, 2025 [90 FR 42708] due to the receipt of adverse comment. EPA refers to this direct final rule as the “withdrawn direct final rule” in the preamble to this final rule. The withdrawn direct final rule and proposed rule are further discussed below followed by a summary of the public comments received in response to these actions.

1. Withdrawn Direct Final Rule

EPA explained in the withdrawn direct final rule that since publication of the Legacy Final Rule, members of the regulated community raised concerns that the existing deadline is infeasible for many owners or operators of CCRMU [90 FR 34363; July 22, 2025]. These entities stated that the compliance timeframes in the Legacy Final Rule incorrectly assume that the FER process can proceed concurrently with the first tasks required to comply with the groundwater monitoring requirements. They contend that the first tasks to comply with the groundwater monitoring requirements (*i.e.*, the design and installation of the groundwater monitoring system) cannot begin until all CCRMU onsite are identified and delineated, which in many cases will be ongoing through late 2026. One organization specifically pointed out that it is impossible to design a groundwater monitoring system that accurately represents the groundwater passing the CCRMU’s waste boundary and the quality of background groundwater, as required in § 257.91, before the unit is fully delineated thru the facility evaluation process. Furthermore, the CCR regulations allow for the use of multiunit groundwater monitoring systems, which requires a complete knowledge of all CCR units onsite prior to design of a multiunit system.

These parties also stated that they use third parties to complete tasks required to comply with the groundwater monitoring provisions, including the design and installation of the groundwater monitoring network and the collection and analysis of samples. These companies identified shortages and backlogs in qualified contractors and laboratories resulting from the increased demand on these resources and existing backlogs and labor shortages as discussed in the Legacy Final Rule. One organization suggested EPA provide 30 months to complete the groundwater monitoring requirements from the existing deadline to complete the FER Part 2, because this would allow as much time as was granted under the 2015 CCR Rule (*i.e.*, 24 months),² plus an additional six months to account for contractor backlogs.

EPA further explained that it reviewed the information provided and was convinced that because owners or operators will be delineating CCRMU late into 2026 (*i.e.*, late into the FER process), the existing deadline does not provide sufficient time for facilities both (1) to design and install a groundwater monitoring system capable of meeting the standards at § 257.91 and (2) to collect and analyze the eight

independent samples for each background and downgradient well, as required by § 257.94(b). EPA acknowledged in the Legacy Final Rule that the deadline for the groundwater monitoring requirements must account for the amount of time owners or operators need to locate CCRMU as part of the FER [89 FR 39063]. Based on the amount of time typically needed to design and install a groundwater monitoring system and to collect and analyze the eight independent samples, and the information provided by commenters regarding the timeframe in which CCRMU will be delineated, EPA concluded in the withdrawn direct final rule that the existing CCRMU groundwater compliance deadline (*i.e.*, May 8, 2028) does not provide a sufficient amount of time to come into compliance. Nor do the existing deadlines adequately account for delays related to the shortage of qualified contractors. Therefore, EPA calculated that an extension of 15 months of the Legacy Final Rule deadline would provide sufficient time for owners or operators to comply with the groundwater monitoring requirements [90 FR 34363–64]. This 15-month extension would have provided owners or operators of regulated CCRMU up to a total of 30 months from the completion of the FER Part 2 to comply with the groundwater monitoring requirements. EPA stated in the withdrawn direct final rule that 30 months is six months longer than was provided under the 2015 CCR Rule to mitigate impacts mentioned by commenters regarding the current labor shortages and backlogs experienced by third-parties necessary to accomplish tasks involved in complying with the groundwater monitoring requirements.

2. Parallel Proposed Rule

As discussed previously, the July 22, 2025 parallel proposed rule solicited comment on extending the deadline to prepare both FER Part 1 and Part 2 by 12 months [90 FR 34411]. The Agency further stated that if EPA extends the FER Parts 1 and 2 deadlines, EPA would make conforming changes to the remaining CCRMU compliance deadlines because the FER serves as the prerequisite for all other CCRMU deadlines, including the groundwater monitoring deadlines. Specifically, EPA would extend the deadlines to comply with the existing groundwater monitoring requirements (and the remaining CCRMU deadlines) by 12 months to match the FER Parts 1 and 2 extensions. *Id.* This comment solicitation also included a table comparing compliance deadlines that

showed the compliance deadlines under this 12-month extension. With respect to the groundwater monitoring requirements under the comment solicitation, the table showed a compliance deadline of May 8, 2029 [90 FR 34411, table 1], which was calculated as a 12-month extension from May 8, 2028 (existing deadline under § 257.90(b)(3)).

3. Summary of Comments Received and Rationale for Final Rule

The Agency received many comments on the contemplated changes to the groundwater monitoring requirement deadlines discussed in the withdrawn direct final rule and parallel proposed rule. This Unit of the preamble contains EPA's summary of the comments.

EPA received many comments broadly opposing the extensions to the groundwater provisions. Some commenters stated specific opposition to extending the deadlines for CCRMU groundwater monitoring. These commenters raised concerns with human health to include cancer, heart damage, lung disease, birth defects, and potential premature death. These commenters stated that the proposed extensions increase the risk that drinking water sources will be polluted by hazardous contaminants like mercury and arsenic and stated that without robust regulations communities will lack access to information to protect themselves from the toxins. Some of these commenters further expressed concern that the proposed extensions would result in lost economic benefits achieved by the Legacy Final Rule, and adverse effects on property values if the CCR contaminated land is not remediated and redeveloped. Other commenters opposed the groundwater extensions stating that the Legacy Final Rule already delays the groundwater report to provide more than four years and since the 2015 CCR rule only provided 2 years for the same work, then the existing deadlines are entirely feasible. One commenter stated that delays to groundwater monitoring and the corrective actions contingent upon it would have serious consequences and that a one- or two-year delay will mean one- or two-years' worth of contaminants escaping into the environment and increasing exposure, risks, and clean-up costs. This commenter disputes industry's comments and states that the extensions are arbitrary, capricious, and unsupported by evidence.

Some commenters specifically expressed support for the proposed rule's 12-month extension. However,

many of the commenters stated that proposed rule's 12-month extension for the groundwater monitoring provisions would not provide adequate time to design and install the groundwater monitoring system, collect eight independent samples, and conduct statistical analysis. Some commenters noted that the groundwater deadline in the proposed rule provides the same amount of time from the completion of FER Part 2 as does the Legacy Final Rule, thus would not be an extension at all. Many commenters supported the extension in the withdrawn direct final rule, which provided a 15-month extension to allow owners and operators a total of 30 months from the completion of the FER Part 2 to comply with the groundwater monitoring provisions. Many of these commenters stated that a 12-month extension does not provide the amount of time between the completion of FER Part 2 and the groundwater monitoring deadlines that EPA stated was necessary in the withdrawn direct final rule. One of these commenters stated that 30 months is a more feasible timeline and that the current timeline does not allow the completion of the groundwater monitoring tasks in a technically and scientifically reliable and accurate manner. Some commenters stated that companies will find it infeasible or face logistical and financial challenges to meet the groundwater monitoring deadlines by the existing deadline of May 8, 2028. Commenters provided logistical challenges including that one facility identified 39 areas that need to be evaluated as potential CCRMUs, estimating that approximately one-third of these will be CCRMUs, which would double the number of regulated CCR units managed by this company. Another company estimated costs up to \$1.14M per site for background sampling, based on nine sampling events for all CCRMUs. These commenters posit that it is necessary to extend the deadlines due to the burdensome work and financial obligations required to comply with the CCRMU regulations. Some of these commenters stated that 30 months is the minimum amount of time necessary to install groundwater monitoring networks and complete initial sampling and noted that providing only a 12-month extension will require companies to begin installing the networks before the identification and delineation work has been completed and documented. Many commenters pointed to the sequential nature of the CCRMU provisions and noted that FER Part 2 is intended to serve as a prerequisite for

the groundwater monitoring requirements, so the groundwater monitoring deadlines need to be based on the FER Part 2 deadline. Some commenters stated that EPA should not assume that the groundwater sampling can start before the completion of FER Part 2, because FER Part 2 results are needed before groundwater monitoring systems can be designed and installed, then once the system is installed a minimum of 24 months is necessary to collect and analyze eight independent groundwater samples, and then the 3 months provided by the current regulations to conduct the statistical analyses is still needed.

Some of the commenters who stated that the proposed rule's 12-month extension for the groundwater monitoring provisions provides an inadequate amount of time also stated that the 15-month extension in the withdrawn direct final rule would be inadequate. Some commenters supported a deadline of 35-months from the completion of the FER Part 2 to comply with the groundwater monitoring requirements. These commenters stated that this 35-month period is consistent with EPA's intent in the withdrawn direct final rule to provide facilities 6 months longer than the Legacy Final Rule to mitigate impacts associated with contractor shortages and noted that the proposed rule does not implement the intent provided in the withdrawn direct final rule. One of these commenters stated the FERs should be completed to delineate the CCRMUs before installing wells and completing the eight required independent sampling events. These commenters stated that 35 months would provide owners and operators with 8 months to conduct groundwater modeling and complete preliminary activities (*i.e.*, establish flow pathways, design the monitoring system, develop workplans for monitoring well installation and locations, contract well drillers, obtain necessary permits and approvals, and prepare for detection monitoring), a minimum of 24 months to collect the eight required samples, and 3 months to analyze the data. These commenters stated that the groundwater monitoring requirements are highly susceptible to unpredictable delays caused by the facility's control to include weather events, permitting and approval requirements, construction restrictions, and contractor shortages and backlogs. One of these commenters provided that shorter deadlines will force facilities to collect samples on an abbreviated timeline, thereby skewing statistical results. Additionally, one of

these commenters further requested an additional 18-month extension to the groundwater monitoring provisions due to the impending changes to the CCRMU regulations over the next 12–14 months to ensure that facilities have adequate time after the revisions to assess the revisions and conduct the compliance activities under the new requirements. Another commenter specifically requested that 36 months from the deadline for completing the FER Part 2 process be provided to allow for contractor shortages, seasonal challenges, and potential rule changes. This commenter additionally requested that another 12-month extension be provided to help review of the CCR Legacy Rule changes and potentially avoid issuing additional extensions.

After considering the comments received, EPA finds that the existing deadline for the groundwater monitoring requirements (*i.e.*, May 8, 2028), as well as the deadlines discussed in the withdrawn direct final rule (*i.e.*, August 8, 2029) and its parallel proposed rule (*i.e.*, May 8, 2029), are not feasible for owners and operators of CCRMU. EPA is persuaded that these deadlines do not provide sufficient time for facilities to both (1) design and install a groundwater monitoring system capable of meeting the standards at § 257.91 and (2) collect and analyze the eight independent samples for each background and downgradient well, as required by § 257.94(b), for the reasons discussed below.

First, the Agency agrees with commenters that it is not appropriate to establish the deadline for the groundwater monitoring requirements based on the assumption that the design and installation of the groundwater monitoring system can be initiated prior to the full lateral and vertical delineation of the CCRMU is complete under the FER Part 2 provisions. EPA acknowledged in the Legacy Final Rule that the deadline for the groundwater monitoring requirements must account for the amount of time owners and operators need to locate CCRMU as part of the FER [89 FR 39063]. Furthermore, as the Agency stated in the Legacy Final Rule, proper site characterization is the foundation for designing a groundwater monitoring system [89 FR 39064]. To complete the installation of the groundwater monitoring system the regulations require that the owner or operator of a CCRMU ensure that the monitoring system consists of a sufficient number of wells both upgradient and downgradient of the CCR unit, installed at appropriate locations and depths, to yield

groundwater samples from the uppermost aquifer that accurately represent the quality of background groundwater and groundwater passing the downgradient waste boundary of the CCR unit, and monitoring of all potential contaminant pathways. 40 CFR 257.91(a)(1) through (2). The number and placement of the monitoring wells is critical to proper characterization of the groundwater. Thus, the specific number, spacing, and depth of the monitoring wells must be determined based on site-specific information, including but not limited to the thorough characterization of aquifer thickness, groundwater flow rate, groundwater flow direction throughout seasonal and temporal fluctuations, the unit's geological setting, and the unit's hydrogeological setting. Therefore, the owner or operator of a CCRMU must know the full lateral and vertical delineation of the CCRMU before an appropriate groundwater monitoring system can be designed and installed.

This final rule establishes February 10, 2031 as the deadline for owners and operators of CCRMU to comply with the groundwater monitoring requirements. See revised § 257.90(b)(3). This new deadline is 33 months later than the existing deadline of May 8, 2028, and provides owners and operators a total of 36 months after the FER Part 2 is completed to comply with the groundwater monitoring requirements. As explained below, EPA is basing this revised deadline on the same task duration provided to existing CCR units under the 2015 CCR Rule to complete the groundwater monitoring requirements (*i.e.*, 30 months) plus 6 months to mitigate the impacts regarding the current labor shortages and backlogs discussed in the withdrawn direct final rule.

To determine the compliance deadline for the groundwater monitoring requirements, the final rule is mostly adopting the approach discussed in the withdrawn final rule with some changes. The important change is that the final rule deadline acknowledges that the design and installation of the groundwater monitoring system cannot be initiated prior to the full delineation of the CCRMU is complete under FER Part 2 provisions.

The withdrawn direct final rule proposed to extend the existing deadline to comply with the groundwater monitoring requirements by 15 months [90 FR 34363]. The Agency explained that this 15-month extension would allow owners and operators of CCRMU a total of 30

months from the completion of the FER Part 2 to comply with the groundwater monitoring requirements. *Id.* EPA further explained that this is “six months longer than was provided under the 2015 CCR Rule to mitigate impacts mentioned by commenters regarding the current labor shortages and backlogs experienced by third-parties necessary to accomplish tasks involved in complying with the groundwater monitoring requirements.” *Id.*

The 2015 CCR Rule required existing CCR units to install the groundwater monitoring system, develop their groundwater sampling and analysis procedures, develop background levels for appendix III and appendix IV constituents, and begin detection monitoring (§ 257.90 through § 257.94) within 24 months of the effective date of that rule [80 FR 21398]. However, the duration EPA allotted to complete these groundwater monitoring actions was actually 30 months, not 24 months. This is because in 2015, EPA assumed that facilities would be able to start installing the groundwater monitoring systems on the rule’s publication date, rather than its effective date, which was 6 months after publication. EPA made this clear in the rule’s preamble, stating that the “groundwater monitoring regulations require that the owner or operator of existing CCR units must comply with § 257.90–§ 257.94 within 30 months of the date of publication of the rule. Essentially, that means that by the end of 30 months, the owner or operator must (1) install the groundwater monitoring system; (2) document the sampling and analysis procedures; (3) establish which statistical tests will be used to determine exceedances; (4) sample all wells to have a minimum of 8 samples for all appendix III and IV parameters; and (5) determine if there is a statistically significant exceedance of any appendix III parameter, which would trigger assessment monitoring.” [80 FR 21408]

Unlike the compliance deadline for groundwater monitoring requirements for existing CCR units, the owners and operators of CCRMU must complete the FER Part 2 actions (*e.g.*, finish delineating the lateral and vertical extent of the CCRMU) before installing groundwater monitoring wells at the CCRMU. That is, the clock for completing the groundwater monitoring requirements for CCRMU cannot start before the deadline to complete the FER Part 2. By accounting for the total time needed to complete the groundwater monitoring requirements (*i.e.*, 30 months; without considering any additional time allotted to mitigate labor

shortages and backlogs discussed immediately below), EPA is ensuring that the facilities nationwide are reasonably able to achieve regulatory compliance with the new compliance deadline.

As mentioned earlier, EPA intended to provide an additional 6 months beyond the 30 months provided in 2015 to mitigate impacts from labor shortages and backlogs experienced by third-parties necessary to accomplish tasks supporting the groundwater monitoring requirements. The Agency continues to believe this time is needed to address identified shortages and backlogs in qualified contractors and laboratories resulting from the increased demand on these resources.

The revised deadline in this final rule addresses commenters’ concerns that the proposed deadlines would require the design and installation of the groundwater monitoring system to begin prior to the deadline to complete FER Part 2. These new deadlines will provide sufficient time to ensure that the background samples are statistically independent and that compliance with the groundwater monitoring requirements is technically feasible. Furthermore, this approach recognizes the importance of proper site characterization as the foundation for designing a groundwater monitoring system and acknowledges that sufficient historical documentation for site characterization may not be available for some CCRMU. In these situations, owners and operators of CCRMU may need to conduct more extensive site reconnaissance and field work to obtain the necessary information to design the groundwater monitoring system. Lastly, EPA recognizes that groundwater monitoring systems designed using inadequate data would be unable to properly monitor groundwater quality coming from the unit and therefore would not be protective of human health and the environment.

EPA disagrees with commenters that requested further extensions of the compliance deadline until after EPA finalizes any additional revisions to the CCRMU regulations to allow facilities to assess the revisions and conduct their compliance activities under any new requirements. Some of these commenters went on to state that extending the deadline to comply with groundwater monitoring requirements is further justified because companies are facing burdensome work and financial obligations in order to comply with the existing CCRMU regulations. First, EPA disagrees that a potential future regulatory revision by itself is a valid basis to extend existing regulatory

deadlines for reasons discussed in Unit IV.A.1. of this preamble [*Air Alliance Houston v. EPA*, 906 F. 3d 1049 (D.C. Cir. 2018)]. Second, the Agency disagrees with commenters advocating to take cost into account as a factor when establishing these deadlines because EPA establishes the requirements under RCRA sections 1008(a)(3) and 4004(a) [42 U.S.C. 6907(a)(3) and 6944(a)] without taking cost into account. [*USWAG*, 901 F.3d at 448–49]

In summary, EPA is extending the deadline for owners and operators of CCRMU to comply with the groundwater monitoring requirements by 33 months to no later than February 10, 2031. See revised §§ 257.90(b)(3) and 257.95(b)(1)(ii). This new deadline is based on the Agency’s assessment of the time required to complete the groundwater monitoring requirements and to provide time for unforeseen and facility-specific delay, accounting for delays such as procuring qualified personnel on contractors, seasonal and regional weather, and permitting and approval needs. Therefore, because EPA is convinced by information from the commenters that facilities would be unable to conduct all the steps necessary to design and install a groundwater monitoring system capable of meeting the standards in § 257.91 by the existing deadline, EPA has extended the deadline to no later than February 10, 2031.

D. Conforming Revisions to Other CCR Management Unit Compliance Deadlines

The FERs serve as the prerequisite for all other CCRMU requirements as explained in the Legacy Final Rule [89 FR 39060; May 8, 2024] and the now withdrawn direct final rule [90 FR 34363; July 22, 2025]. EPA also stated in these same actions that the deadline for owners and operators to establish the publicly accessible CCR website is tethered to the FER Part 1 deadline because the FER Part 1 is the first document that needs to be posted to a facility’s CCR website. Similarly, the Agency explained that installing the groundwater monitoring system, developing the sampling and analysis program, and initiating the detection and assessment monitoring programs is also a prerequisite for completing the initial annual groundwater monitoring report, preparing the written closure and post-closure care plans, and initiating closure of the CCRMU.

In the now withdrawn direct final rule, EPA explained that conforming changes would be made to the remaining CCRMU compliance

deadlines based on any finalized changes to the deadlines for the FER Parts 1 and 2 and the groundwater monitoring system requirements. For example, the Agency put forward an additional option in the withdrawn direct final rule for the FER Part 1 to be completed along with the FER Part 2 [90 FR 34364]. EPA therefore discussed providing owners and operators the option to establish the public CCR website by no later than either February 9, 2026 (the existing FER Part 1 deadline) or February 8, 2027, to correspond to when the owner or operator would complete the FER Part 1 under the additional option. *Id.* Regarding the deadline to complete the initial groundwater monitoring and corrective action report, EPA would have extended the deadline to complete this report to no later than January 31 of the following calendar year, January 31, 2030, because the Agency was considering extending the groundwater monitoring compliance deadlines by 15 months to August 8, 2029. *Id.* Finally, regarding the deadline to complete the written closure and post-closure care plans and the deadline to initiate closure of the CCRMU, in the withdrawn direct final rule, EPA sought to extend the deadline to prepare these plans and to initiate CCRMU closure by 15 months to February 8, 2030 and August 8, 2030, because the deadline of the predecessor activity (*i.e.*, the groundwater monitoring compliance deadline) would have been extended by 15 months. *Id.* As EPA explained, these plans and actions should be informed by available groundwater monitoring data.

Summary of Comments Received and Rationale for Final Rule

The Agency received many comments on the contemplated changes for the conforming revisions to other CCRMU compliance deadlines discussed in the withdrawn direct final rule and parallel proposed rule. This Unit of the preamble contains EPA's summary of the comments.

The Agency received numerous comments which generally opposed the extensions, and therefore also oppose these extensions. No comments that specifically opposed the conforming extensions were received.

Conversely, the Agency received many comments which generally supported the extensions and therefore also support the conforming revisions to the other CCRMU compliance deadlines. Some commenters specifically supported these extensions by simply stating that they are necessary and that the current deadlines do not

provide sufficient time for companies to come into compliance. Other commenters provided a rationale based on the sequential nature of the CCRMU provisions, stating that groundwater monitoring requirements are prerequisites for the remaining CCRMU requirements to include the requirements to prepare the initial and subsequent annual groundwater monitoring and corrective action reports, prepare written closure and post-closure plans, and initiate closure of any CCRMUs. Similarly, other commenters supported the extension stating that the requirements should be predicated on the completion of the FER process. And other commenters requested that these extensions be based on the withdrawn direct final rule, stating that the timeline in the proposed rule does not provide sufficient time to complete the groundwater monitoring provisions and discussing the sequential nature of the provisions. Some of these commenters provided that the deadline for the initial groundwater monitoring and corrective action report should be extended to no later than January 31 of the year following the completion of the groundwater monitoring requirements; the deadlines for the closure and post-closure plans should be six months from the completion of the groundwater monitoring requirements; and the deadlines to initiate closure and implement closure activities should similarly be extended. Some commenters expressed support for these conforming extensions, due to the uncertainties associated with potential upcoming changes to the Legacy Final Rule. One of these stated that because of the Legacy Final Rule revisions the EPA should provide an additional 12-months on top of the proposed extensions to help with review of the Legacy Final Rule changes and potentially avoid issuing additional extensions, this commenter also stated that this will provide time for education and operational flexibility. Similarly, another commenter requested an additional 18-month extension to these provisions due to the impending changes to the CCRMU regulations over the next 12 to 14 months to ensure that facilities have adequate time after the revisions to assess the revisions and conduct the compliance activities under the new requirements. Some commenters stated that the conforming extensions should be based on the final extended groundwater provisions deadline, which should be based on the deadline for the FER Part 2.

The Agency agrees that conforming extensions are necessary. In this final

rule, EPA is extending the deadlines for owners and operators of a CCRMU to establish a CCR website, complete the initial annual groundwater monitoring and corrective action report, complete the initial written closure and post-closure care plans, and initiate closure of the CCRMU, as discussed below.

EPA is extending the deadline for owners and operators of CCRMU to establish a public CCR website by 12 months to February 9, 2027 from February 9, 2026. This deadline matches the revised deadline to complete the FER Part 1, which, as discussed in Unit IV.B. of this preamble, is also being extended by 12 months to February 9, 2027. Tying the deadline to establish the CCR website to the completion of the FER Part 1 is appropriate because the FER Part 1 is the first reporting requirement for CCRMU. This is also consistent with the rationale discussed in the withdrawn direct final rule [90 FR 34364]. See the revised § 257.75(c)(4).

This final rule also extends the deadline to complete the initial annual groundwater monitoring and corrective action report to no later than January 31, 2032 from January 31, 2029. This revised deadline is established based on the first January 31 following the year that the prerequisite groundwater monitoring requirements are completed, which include the design and installation of the groundwater monitoring system, development of the groundwater sampling and analysis program, and the initiation of the combined detection and assessment monitoring programs. As discussed in Unit IV.C. of this preamble, the new compliance deadline for the prerequisite groundwater monitoring requirements is February 10, 2031. Because the prerequisite groundwater monitoring requirements will be completed in 2031, the new deadline to complete the initial annual groundwater monitoring and corrective action report is January 31, 2032. This approach to establishing the deadline to complete initial annual groundwater monitoring and corrective action report is based on EPA's preference to have the annual report cover an entire calendar year versus portions of two calendar years. This is also consistent with the rationale discussed in the withdrawn direct final rule [90 FR 34364]. See revised § 257.90(e).

Finally, this final rule extends the deadlines to complete the written closure and post-closure care plans by 33 months to August 11, 2031 from November 8, 2028. Similarly, the Agency is also extending the deadline to initiate closure of the CCRMU by the

same 33 months to February 9, 2032 from May 8, 2029. EPA is extending these deadlines so that preparation of the plans and subsequent initiation of closure can be informed by the groundwater monitoring data and information. As explained in Unit IV.C. of this preamble, the new compliance deadline for the groundwater monitoring requirements under § 257.90(b)(3) is February 10, 2031, which equates to a 33-month extension of the existing compliance deadline of May 8, 2028. Because the groundwater monitoring compliance deadlines have been extended by 33 months, EPA is extending the deadline to complete the written closure and post-closure care plans and the deadline to initiate closure by the same 33-month period to August 11, 2031 and February 9, 2032, respectively. This approach to establishing the extension duration is consistent with the rationale discussed in the withdrawn direct final rule [90 FR 34364]. See revised §§ 257.101(f)(1), 257.102(b)(2)(iii), and 257.104(d)(2)(iii).

V. Corrections and Clarifications Proposed on January 16, 2025

On January 16, 2025, EPA published a direct final rule [90 FR 4635] and a parallel notice of proposed rulemaking [90 FR 4707] to correct errors and clarify several provisions published in the Legacy Final Rule. During the 60-day public comment period for these actions, EPA received eleven public comment submissions. The Agency subsequently withdrew the direct final rule on March 20, 2025 [90 FR 13084] due to the receipt of adverse comment. In this **Federal Register** document the Agency refers to this withdrawn action as the “withdrawn corrections direct final rule.”

As explained in the January 16, 2025 actions, EPA proposed to correct several typographical errors in the regulatory text, correct regulatory text that does not conform to the Agency’s stated positions in the Legacy Final Rule preamble, and revise regulatory provisions that as drafted have the potential to be ambiguous or confusing. In total, the January 16, 2025 actions covered revisions to the following sections of 40 CFR part 257, subpart D: §§ 257.50 (scope and purpose), 257.53 (definitions), 257.75 (requirements for CCRMU), 257.80 (fugitive dust requirements), 257.90 (groundwater monitoring and corrective action applicability), 257.95 (assessment monitoring program), 257.100 (inactive and legacy CCR surface impoundments), and 257.102 (closure of CCR units).

Because the withdrawn corrections direct final rule did not become

effective, the Agency is proceeding with this final rule for a subset of issues based on the proposed rule of January 16, 2025 [90 FR 4707]. EPA is primarily focusing on making corrections to provisions that apply to legacy CCR surface impoundments. In general, the Agency is not taking final action in this final rule on CCRMU-specific corrections due to EPA’s ongoing review of the CCRMU requirements in the Legacy Final Rule. Specifically, EPA is taking final action on the following amendments that were discussed in the withdrawn corrections direct final rule:

- Correcting a typographical error in § 257.75(d)(1);
- Revising several paragraphs in § 257.100(f), (g), and (h); and
- Correcting errors in § 257.102(e) and (f).

EPA is not taking final action in this final rule on the remaining issues raised in the withdrawn corrections direct final rule. The Agency may do so in a separate final rule and will respond to significant comments in that separate action. See table 2 in Unit I.B. of this **Federal Register** document for a summary of the issues being resolved in this final rule.

A. Correcting Typographical Errors in § 257.75(d)(1)

EPA proposed to correct an error in the first sentence of § 257.75(d)(1) that included an incorrect cross-reference (*i.e.*, the reference to paragraph (d)(1)(xiii) included an incorrect third paragraph designation). See Unit IV.C.3. of the withdrawn corrections direct final rule’s preamble [90 FR 4639]. EPA did not receive any comments opposing these revisions. This final rule corrects this part of the first sentence of paragraph § 257.75(d)(1) to read: “information specified in paragraphs (d)(1)(i) through (xiv) of this section . . .”

In addition, § 257.75(d)(1) also includes several references to the FER Part 2; however, the text included in the Legacy Final Rule is uncapitalized. This final rule capitalizes these terms to read “Facility Evaluation Report Part 2” to be consistent with other uses of the term.

Given EPA’s ongoing review of the CCRMU requirements finalized in the Legacy Final Rule, the Agency is generally not taking final action at this time on CCRMU-specific issues included in the withdrawn corrections direct final rule [90 FR 4635; January 16, 2025]. However, EPA is finalizing the corrections to § 257.75(d)(1) described in the preceding paragraphs in this final rule because the Agency is already revising this paragraph to extend the deadline for facilities to complete the

FER Part 2 as described in Unit IV.B. of this preamble.

B. Correcting Errors in § 257.100(f)

1. Correcting the Facility Evaluation Report Requirements for Facilities With a Legacy CCR Surface Impoundment in § 257.100(f)(1)(iii)

Section 257.100(f)(1) requires owners and operators of legacy CCR surface impoundments to prepare an applicability report by the effective date of the Legacy Final Rule. These provisions also established procedures to provide owners and operators with additional time to complete the legacy impoundment applicability report should the owner or operator elect to conduct a field investigation to assess the impoundment for the presence or absence of free liquids [§ 257.100(f)(1)(iii)]. For facilities that elect to conduct a field investigation, the regulations include provisions to extend deadlines for subsequent requirements. As explained in the proposal, the Legacy Final Rule failed to extend the deadline for all subsequent requirements (*e.g.*, the facility evaluation report requirements for facilities with a legacy impoundment), and therefore EPA proposed to apply the extension to the mistakenly omitted requirements. See Unit IV.G.2. of the withdrawn corrections direct final rule’s preamble [90 FR 4640].

EPA received no comments opposing this rule revision and therefore is finalizing this amendment. This final rule revises the third sentence of § 257.100(f)(1)(iii)(A) by replacing the phrase “the compliance timeframes for the requirements specified under paragraphs (f)(2) through (5) of this section are adjusted” with the phrase “the compliance timeframes for all other applicable requirements under this subpart are adjusted.”

2. Revising § 257.100(f)(1)(iii)(A)(3)

EPA proposed to correct a typographical error in the introductory text of § 257.100(f)(1)(iii)(A)(3) that omitted the word “all.” See Unit IV.G.3. of the withdrawn corrections direct final rule’s preamble [90 FR 4640]. EPA received no comments opposing this revision and therefore is finalizing it. This final rule corrects the error so that the regulatory text now reads: “The details of a written field investigation work plan, including all of the following:”

3. Revising § 257.100(f)(4)(iv)

EPA proposed to correct a typographical error in § 257.100(f)(4)(iv), which specifies when

the first annual groundwater monitoring and corrective action report is due for legacy CCR surface impoundments. As explained in Unit IV.G.5. of the withdrawn corrections direct final rule's preamble [90 FR 4640], EPA realized that this deadline was one year too soon. EPA received no comments opposing this rule revision and therefore is finalizing it. This final rule revises the deadline for owners and operators of legacy impoundments to prepare the initial groundwater monitoring and corrective action report from January 31, 2027 to January 31, 2028.

C. Correcting Errors in § 257.100(g)

1. Revising § 257.100(g)

EPA proposed to revise the certification of closure by removal provision in § 257.100(g) by adding a sentence that exempts owners and operators of legacy CCR surface impoundments that complete the certification from any further requirements under 40 CFR part 257, subpart D. EPA explained in Unit IV.G.6. of the withdrawn corrections direct final rule's preamble [90 FR 4640–41] that the Legacy Final Rule preamble clearly stated that these impoundments are not subject to any further requirements. EPA received no comments opposing this rule revision and therefore is finalizing it. This final rule corrects the error by adding the following sentence to § 257.100(g): “If the owner or operator meets all the requirements of this paragraph (g), no further requirements under this subpart apply.”

2. Revising § 257.100(g)(6)(vii)

EPA proposed to correct a typographical error in § 257.100(g)(6)(vii) that mistakenly references “paragraph (g)(3) of this section,” rather than paragraph (g)(6). See Unit IV.G.7. of the withdrawn corrections direct final rule's preamble [90 FR 4641]. EPA received no comments opposing this revision and therefore is finalizing it. This action finalizes this change to § 257.100(g)(6)(vii) by replacing the reference to “paragraph (g)(3)” with “paragraph (g)(6).”

D. Clarifying § 257.100(h)

EPA proposed to simplify § 257.100(h) by replacing a cross-reference to a compliance date with the actual compliance date found in this paragraph. See Unit IV.G.8. of the withdrawn corrections direct final rule's preamble [90 FR 4641]. EPA received no comments opposing this revision and

therefore is finalizing it. This action finalizes this change to § 257.100(h) by replacing the phrase “the date listed in paragraph (f)(1)(i) of this section” with “November 8, 2024.”

E. Correcting Errors in § 257.102

1. Revising § 257.102(e)(4)

EPA proposed to amend the regulations to clarify that legacy CCR surface impoundments and CCRMU are not eligible for the idling provisions under the criteria for conducting closure or retrofit of CCR units in § 257.102(e). See Unit IV.H.1. of the withdrawn corrections direct final rule's preamble [90 FR 4641]. EPA received no comments opposing this revision and therefore is finalizing it. This final rule amends § 257.102(e)(4) by adding new paragraphs (e)(4)(vi) and (vii).

2. Revising § 257.102(f)(1)(ii)

EPA proposed to amend the closure provisions to include legacy CCR surface impoundments to the list of CCR units that are provided five years to complete closure to correct a regulatory text drafting error in the Legacy Final Rule. See Unit IV.H.2. of the withdrawn corrections direct final rule's preamble [90 FR 4641]. EPA received no comments opposing this revision and therefore is amending § 257.102(f)(1)(ii) to add legacy CCR surface impoundments to the list of CCR units provided five years to complete closure.

VI. Rationale for Effective Date

EPA is making this rule effective immediately as “a substantive rule which grants or recognizes an exemption or relieves a restriction” under the Administrative Procedure Act (APA) section 553(d)(1) [5 U.S.C. 553(d)(1)]. This action relieves restrictions by revising certain of the 2024 rule's compliance deadlines.

Section 559 of the APA provides that section 553(d) applies in the absence of a specific statutory provision establishing an effective date [5 U.S.C. 553(d) and 559]. EPA has determined there is no specific provision of RCRA addressing the effective date of regulations that would apply here, and thus the APA's effective date applies.

EPA has previously interpreted section 4004(c) of RCRA [42 U.S.C. 6944(c)] to generally establish a six-month effective date for rules issued under subtitle D [80 FR 37988, 37990; July 2, 2015]. After further consideration, EPA interprets section 4004(c) to establish an effective date solely for the regulations that were required to be promulgated under subsection (a). Section 4004(c) is silent

as to subsequent revisions to those regulations.

Section 4004(c) states that the prohibition in subsection (b) shall take effect six months after promulgation of regulations under subsection (a). Subsection (a), in turn provides that “[n]ot later than one year after October 21, 1976 . . . [EPA] shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter.” As noted, section 4004(c) is silent as to revisions to those regulations.

In response to Congress's mandate in section 4004(a), EPA promulgated regulations on September 13, 1979 [44 FR 53438]. EPA interprets section 4004(c) to establish an effective date applicable only to that action, and not to future regulations the Agency might issue under this section. In the absence of a specific statutory provision establishing an effective date for this rule, APA section 553(d) applies.

There is no indication in RCRA or its legislative history that Congress intended for the Agency to have less discretion under RCRA subtitle D than it would have under the APA to establish a suitable effective date for subsequent rules issued under section 4004(c). Consistent with EPA's interpretation of the express language of section 4004, EPA interprets statements in the legislative history, explaining that section 4004(c) provides that the effective date is to be 6 months after the date of promulgation of regulations, as referring to the initial set of regulations required by Congress to be promulgated not later than 1 year after October 21, 1976. These statements do not mandate a 6-month effective date for every regulatory action that EPA takes under this section. This rule contains specific, targeted revisions to rules issued in 2015 and 2024, and the legislative history regarding section 4004 speaks only to the initial 1976 mandated regulations.

This reading allows the Agency to establish an effective date appropriate for the nature of the regulation promulgated, which is what EPA believes Congress intended. EPA further considers that making this rule effective immediately as “a substantive rule which grants or recognizes an exemption or relieves a restriction” under APA section 553 is reasonable in this circumstance. This action relieves restrictions by revising the 2024 rule's 2026 and subsequent compliance deadlines.

VII. The Projected Economic Impact of This Action

EPA estimated the costs and benefits of this final rule in a Regulatory Impact Analysis (RIA), which is available in the docket for this action.

A. Affected Universe

The Universe of facilities and units affected by this final rule consists of two categories. The first is composed of facilities with CCRMU. The RIA identifies 183 CCRMU at 95 facilities. The second category is composed of CCRMU at “other active facilities,” (OAFUs in the Legacy CCR final rule). The RIA identifies 15 CCRMU at six OAFUs. Most of these facilities correspond to NAICS code 221112.

B. Baseline Costs

The baseline costs of this action consist of all reporting and recordkeeping costs mandated by the Legacy final rule for facilities with CCRMUs. The RIA for the Legacy final rule estimated these costs to be an annualized \$1.73 million when discounting at 3% and an annualized \$3.68 million when discounting at 7%.

C. Costs and Benefits of This Final Rule

The RIA estimates that the annualized cost savings of this action will be approximately \$8.1–\$9.5 million per year when discounting at 3%. The RIA estimates that the annualized cost savings of this action will be approximately \$25.0–\$30.0 million per year when discounting at 7%. The RIA estimates that the annualized reduction in benefits of this action will be approximately \$0.8–\$2.0 million per year when discounting at 3%. The RIA estimates that the annualized reduction in benefits of this action will be approximately \$1.3–\$3.3 million per year when discounting at 7%. Overall, the RIA estimates that the net annualized cost savings of this action will be \$7.3–\$7.5 million per year when discounting at 3%, and \$24–\$27 million when discounting at 7%.

VII. Statutory and Executive Order Reviews

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

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

This action is a significant regulatory action as defined under section 3(f)(1) of Executive Order 12866. Accordingly, it was submitted to the Office of

Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, “Regulatory Impact Analysis: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule,” is available in the docket and is briefly summarized in Unit VII. of this preamble.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA’s analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. An ICR covering the information collection activities contained in the existing Legacy Final Rule has been submitted for OMBs approval under the temporary OMB control number 2050–0231.

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. In making this determination, the EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden on the small entities subject to the rule. EPA estimates that 175 small entities operate in NAICS 221112 and that of these five may incur costs in excess of one and three percent of annual revenues under the 2024 Legacy/CCRMU final rule. This rule relieves burden by establishing an additional option for owners or operators of CCRMU to comply with the FER Part 1 requirements and extending the deadline for owners and operators of CCRMU to comply with groundwater monitoring requirements. This delay affords all entities, including small entities, more time to comply, and reduces compliance costs by pushing them into the future. EPA estimates that the overall annualized cost savings of this rule will range from approximately \$8.1–\$9.5 million per year when discounting at 3% to approximately

\$25.0–\$30.0 million per year when discounting at 7%. EPA expects that small entities will realize a portion of this savings in proportion to the number of CCRMU located at facilities owned and operated by small entities. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. The rule relieves burden by establishing an additional option for owners or operators of CCRMU to comply with the FER Part 1 requirements and extending the deadline for owners and operators of CCRMU to comply with groundwater monitoring requirements. This rule does not impose any additional requirements. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

In the 2024 Legacy/CCRMU Final Rule RIA, EPA conducted a geographic analysis of the location of facilities containing Legacy CCR SIs and

CCRMUs in relation to children under the age of 5. That analysis found that the population within one mile of plants in the universe of Legacy CCR SIs and CCRMUs did not include an increased higher-than-average proportion of children under age 5 compared with the national proportion of children under age 5. The final rule reduces benefits to populations living near CCRMU (and OAFU) sites as it allows compliance activities to begin later. Therefore, the final rule may result in incremental health risk to children (and other populations) equal to the exposure risks of delay in compliance activity implementation at facilities with CCRMUs and OAFUs. However, as these facilities are located near populations with proportions of children roughly consistent with the national average, the effects specific to children are not anticipated to be disproportionate.

However, EPA's *Policy on Children's Health* applies to this action. Information on how the Policy was applied is available under "Children's Environmental Health" in the Supplementary Information section of this preamble.

I. Executive Order 13211: Actions Concerning Regulations 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. Further, the Agency has concluded that this action is not likely to have any adverse energy effects because the rule simply extends deadlines for owners and operators of active CCR units or inactive facilities (not generating electricity) with a legacy CCR surface impoundment.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth in 5 U.S.C. 804(2).

Endnotes

1. Public Hearing Transcript: Docket ID No. EPA-HQ-OLEM-2020-0107-1367.

2. The 24-month period is the duration between the effective date of the 2015 CCR Rule (October 19, 2015) and the deadline for existing CCR surface impoundments to comply with the groundwater monitoring

requirements of § 257.90(b)(1) (October 17, 2017).

List of Subjects in 40 CFR Part 257

Environmental protection, Coal, Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

Lee Zeldin,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6927, 6944, 6945(a) and (d); 33 U.S.C. 1345(d) and (e).

■ 2. Amend § 257.75 by revising paragraphs (c)(1) introductory text, (c)(4), (d)(1) introductory text, and (d)(1)(xii) to read as follows:

§ 257.75 Requirements for identifying CCR management units.

* * * * *

(c) * * *

(1) No later than Tuesday, February 9, 2027, the owner or operator of an active facility or a facility with a legacy CCR surface impoundment must prepare a Facility Evaluation Report Part 1, which shall contain, to the extent reasonably and readily available, the information specified in paragraphs (c)(1)(i) through (xiv) of this section. The owner or operator has prepared the Facility Evaluation Report Part 1 when the report has been placed in the facility's operating record as required by § 257.105(f)(25).

* * * * *

(4) No later than Tuesday, February 9, 2027, the owner or operator must notify the Agency of the establishment of a CCR website using the procedures in § 257.107(a) via the "contact us" form on EPA's CCR website.

* * * * *

(d) * * *

(1) No later than Tuesday, February 8, 2028, the owner or operator of an active facility or a facility with a legacy CCR surface impoundment must prepare a Facility Evaluation Report Part 2, which shall contain, to the extent not provided in the Facility Evaluation Report Part 1 under paragraph (c) of this section, the information specified in paragraphs (d)(1)(i) through (xiv) of this section obtained from a physical evaluation of

the facility, including where necessary field sampling. The owner or operator has prepared the Facility Evaluation Report Part 2 when the report has been placed in the facility's operating record as required by § 257.105(f)(26).

* * * * *

(xii) Any additional supporting information used to identify and evaluate CCR management units at the facility, including but not limited to any construction diagrams, engineering drawings, permit documents, wastestream flow diagrams, aerial photographs, satellite images, historical facility maps, any field or analytical data, groundwater monitoring data or reports, inspection reports, and other documents used to identify and assess CCR management units at the facility. Additionally, as necessary and timely, any updates to the Part 1 data gap remedy plan must be added to the record during the Facility Evaluation Report Part 2 timeframe.

* * * * *

■ 3. Amend § 257.90 by revising paragraphs (b)(3) introductory text and (e) introductory text to read as follows:

§ 257.90 Applicability.

* * * * *

(b) * * *

(3) *CCR management units.* No later than Monday, February 10, 2031, the owner or operator of the CCR management unit must be in compliance with the following groundwater monitoring requirements:

* * * * *

(e) *Annual groundwater monitoring and corrective action report.* For existing CCR landfills and existing CCR surface impoundments, no later than January 31, 2018, and annually thereafter, the owner or operator must prepare an annual groundwater monitoring and corrective action report. For new CCR landfills, new CCR surface impoundments, and all lateral expansions of CCR units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31 of the year following the calendar year a groundwater monitoring system has been established for such CCR unit as required by this subpart, and annually thereafter. For CCR management units, the owner or operator must prepare the initial annual groundwater monitoring and corrective action report no later than January 31, 2032, and annually thereafter. For the preceding calendar year, the annual report must document the status of the groundwater monitoring and corrective action program for the CCR unit, summarize

key actions completed, describe any problems encountered, discuss actions to resolve the problems, and project key activities for the upcoming year. For purposes of this section, the owner or operator has prepared the annual report when the report is placed in the facility's operating record as required by § 257.105(h)(1). At a minimum, the annual groundwater monitoring and corrective action report must contain the following information, to the extent available:

* * * * *

■ 4. Amend § 257.95 by revising paragraph (b)(1)(ii) to read as follows:

§ 257.95 Assessment monitoring program.

* * * * *

(b) * * *

(1) * * *

(ii) The owner or operator of a CCR management unit must sample and analyze the groundwater for all constituents listed in appendix IV to this part no later than Monday, February 10, 2031.

* * * * *

■ 5. Amend § 257.100 by revising paragraphs (f)(1)(iii)(A) introductory text, (f)(1)(iii)(A)(3) introductory text, (f)(4)(iv), (g) introductory text, (g)(6)(vii), and (h) introductory text to read as follows:

§ 257.100 Inactive CCR surface impoundments and Legacy CCR surface impoundments.

* * * * *

(f) * * *

(1) * * *

(iii) * * *

(A) Notwithstanding the deadline to complete the applicability report under paragraph (f)(1)(i) of this section, an owner or operator may secure additional time to complete the report for the sole reason of determining through a field investigation whether the unit contains both CCR and liquids. The amount of additional time that can be secured is limited as specified in paragraph (f)(1)(iii)(B) of this section. For owners and operators following the procedures of this paragraph (f)(1)(iii), the compliance timeframes for all other applicable requirements under this subpart are adjusted by the length of the extension(s) justified under this paragraph (f)(1)(iii). To qualify for additional time, the owner or operator must prepare an applicability extension report consisting of the following:

* * * * *

(3) The details of a written field investigation work plan, including all of the following:

* * * * *

(4) * * *

(iv) No later than January 31, 2028, prepare the initial groundwater monitoring and corrective action report as set forth in § 257.90(e).

* * * * *

(g) For owners and operators of legacy CCR surface impoundments that completed closure of the CCR unit by removal of waste prior to Friday, November 8, 2024, no later than Friday, November 8, 2024, complete a closure certification that includes the information in paragraphs (g)(1) through (g)(6) of this section. If the owner or operator meets all the requirements of this paragraph (g), no further requirements under this subpart apply.

* * * * *

(6) * * *

(vii) The last groundwater monitoring sample used to document that the standard in paragraph (g)(3) of this section has been met must have been collected no earlier than one year prior to the initiation of closure.

(h) If the owner or operator of a legacy CCR surface impoundment is unable to complete the closure by removal certification by November 8, 2024, they may elect to conduct groundwater monitoring in accordance with §§ 257.90 through 257.95 to demonstrate there are no exceedances of the groundwater protection standards. If the owner or operator meets all the requirements of paragraph (h)(1) of this section, no further requirements under this subpart apply. If the owner or operator does not meet the requirements of paragraph (h)(1) of this section by Monday, May 8, 2028 or if one or more constituents in appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under § 257.95(h), they must proceed in accordance with paragraph (h)(2) of this section.

* * * * *

■ 6. Amend § 257.101 by revising paragraph (f)(1) to read as follows:

§ 257.101 Closure or retrofit of CCR units.

* * * * *

(f) * * *

(1) No later than Monday, February 9, 2032, an owner or operator of a CCR management unit must initiate the closure of the CCR management unit in accordance with the requirements of § 257.102.

* * * * *

■ 7. Amend § 257.102 by:

■ a. Revising paragraphs (b)(2)(iii), (e)(4)(iv) and (v);

■ b. Adding paragraphs (e)(4)(vi) and (vii); and

■ c. Revising paragraph (f)(1)(ii).

The revisions and additions read as follows:

§ 257.102 Criteria for conducting the closure or retrofit of CCR units and closure of CCR management units.

* * * * *

(b) * * *

(2) * * *

(iii) *CCR management units.* Except as provided for in paragraph (b)(2)(v) of this section, no later than Monday, August 11, 2031, the owner or operator of the CCR management unit must prepare an initial written closure plan consistent with the requirements specified in paragraph (b)(1) of this section.

* * * * *

(e) * * *

(4) * * *

(iv) An owner or operator of a new CCR surface impoundment closing the CCR unit as required by § 257.101(c);

(v) An owner or operator of an existing CCR landfill closing the CCR unit as required by § 257.101(d);

(vi) An owner or operator of a legacy CCR surface impoundment closing the CCR unit as required by § 257.101(e); or

(vii) An owner or operator of a CCR management unit closing the CCR unit as required by § 257.101(f).

(f) * * *

(1) * * *

(ii) For existing and new CCR surface impoundments, any lateral expansion of a CCR surface impoundment, and legacy CCR surface impoundments, within five years of commencing closure activities.

* * * * *

■ 8. Amend § 257.104 by revising paragraph (d)(2)(iii) to read as follows:

§ 257.104 Post-closure care requirements.

* * * * *

(d) * * *

(2) * * *

(iii) *CCR management units.* No later than Monday, August 11, 2031, the owner or operator of a CCR management unit must prepare an initial written post-closure care plan as set forth in paragraph (d)(1) of this section.

* * * * *

[FR Doc. 2026-02599 Filed 2-6-26; 4:15 pm]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2022-0099;
FXES1113090000FEDR-267-FF09E22000]

RIN 1018-BF53

Endangered and Threatened Wildlife and Plants; Removal of the Southeast U.S. Distinct Population Segment of the Wood Stork From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the Southeast U.S. distinct population segment (DPS) of the wood stork (*Mycteria americana*) from the Federal List of Endangered and Threatened Wildlife. After a review of the best scientific and commercial data available, we find that delisting the species is warranted. Our review indicates that the threats to the Southeast U.S. DPS of the wood stork have been eliminated or reduced to the point that the species no longer meets the definition of an endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). Accordingly, the prohibitions and conservation measures provided by the Act, particularly through sections 4 and 7, will no longer apply to the Southeast U.S. DPS of the wood stork.

DATES: This rule is effective March 12, 2026.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov>. Comments and materials we received are available for public inspection at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2022-0099.

Availability of supporting materials: This rule and supporting documents, including the Recovery Plan, post-delisting monitoring plan, and the species status assessment (SSA) report, are available at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2022-0099.

FOR FURTHER INFORMATION CONTACT:

Nikki Colangelo, Supervisor, Division of Classification and Recovery, U.S. Fish and Wildlife Service, Florida Ecological Services Office; telephone: 772-226-8138; Nikki_Colangelo@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY,

TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants delisting if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). The Southeast U.S. DPS of the wood stork is listed as threatened, and we are delisting it. Delisting a species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This final rule delists the Southeast U.S. DPS of the wood stork based on its recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The determination to delist a species must be based on an analysis of the same factors.

Under the Act, we must review the status of all listed species at least once every five years. We must delist a species if we determine, on the basis of the best scientific and commercial data available, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11(e) identify four reasons why we might determine a species shall be delisted: (1) The species is extinct; (2) the species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species; (3) new information that has become available since the original listing decision shows the listed entity does not meet the definition of an endangered species or a threatened species; or (4) new information that has become available since the original listing decision shows the listed entity does not meet the definition of a species. Here, we have determined that

the Southeast U.S. DPS of the wood stork has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species; therefore, we are delisting it.

Previous Federal Actions

On February 28, 1984, we listed the U.S. breeding population of the wood stork as an endangered species under the Act because it had declined by more than 75 percent over a 50-year time period starting in the 1930s (49 FR 7332). On June 30, 2014, we finalized a rule downlisting the U.S. breeding population of the wood stork from endangered to threatened and establishing the Southeast U.S. breeding population in Alabama, Florida, Georgia, North Carolina, Mississippi, and South Carolina as a distinct population segment (DPS) (79 FR 37078). On February 15, 2023 (88 FR 9830), we published a proposed rule to delist the Southeast U.S. DPS of the wood stork based on recovery.

Please refer to the February 15, 2023 (88 FR 9830), proposed rule for a detailed description of the previous Federal actions concerning this species. In the interest of conciseness, throughout the rest of this document we will refer to the Southeast U.S. DPS of wood stork simply as “wood stork” or “DPS.”

Peer Review

A species status assessment (SSA) team prepared an SSA report for the wood stork, which has been updated with recent data and analyses (Service 2024, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act (<https://www.fws.gov/sites/default/files/documents/peer-review-policy-directors-memo-2016-08-22.pdf>), we solicited independent scientific review of the information contained in the wood stork SSA report. As discussed in the proposed rule, we sent the SSA report to six independent peer reviewers and received two responses. The peer reviews can be found at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2022-

0099. The SSA report was also submitted to multiple Federal, State, municipal, and conservation partners for technical review. In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the proposed rule (88 FR 9830 at 9832, February 15, 2023).

Summary of Changes From the Proposed Rule

We made several changes in this final rule in response to public comments we received on the February 15, 2023, proposed rule (88 FR 9830). In incorporating the primary changes resulting from public input:

- We updated our discussion of the future effects of sea level rise to wood stork habitat, which includes an analysis of the latest sea level rise projections (Sweet et al. 2022, entire).
- We updated our future condition discussion both in this final rule and in the updated (version 1.1 of the) SSA (Service 2024, chapter 6) to include an analysis of suitable habitat availability for future expansion of wood storks within their breeding range, population growth projections based upon current trends and peak counts, and other additional relevant information.
- We added new demographic data, including total number of nesting pairs (from 2022), and productivity rates (for 2020, 2021, and 2022).
- We added information regarding nesting colony turnover in wood storks and colony location records.
- We made minor, nonsubstantive changes and corrections, and minor editorial changes throughout the preamble of our final rule to improve readability.

The information we received during the comment period for the proposed rule did not change our previous analysis of the magnitude or severity of threats facing the wood stork or our determination that the wood stork is no longer a threatened or endangered species.

Summary of Comments and Recommendations

In the proposed rule published on February 15, 2023 (88 FR 9830), we requested that all interested parties submit written comments on the proposal by April 17, 2023. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any

requests for a public hearing. In preparing this final rule, we reviewed all comments we received for substantive issues and new information regarding the information contained in the proposed rule. We made minor, nonsubstantive changes and clarifications to this document in response to comments we received, as appropriate. All substantive information provided during comment periods has either been incorporated directly into this final determination or is addressed below.

Public Comments

(1) *Comment:* Multiple commenters stated that the wood stork should not be delisted because not all of the recovery criteria from the recovery plan have been met.

Our Response: Recovery plans provide roadmaps to species recovery, but meeting recovery criteria and accomplishing recovery actions are not required to achieve recovery of a species or to evaluate it for delisting. In addition, recovery plans are nonbinding documents that may rely on voluntary participation from landowners, land managers, and other recovery partners, but are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. Recovery of a species is a dynamic process that is not limited to the guidance recommended in a recovery plan.

A determination of whether a species should be delisted is made solely on an analysis of the best scientific and commercial data available to determine whether the species meets the Act's definitions of "endangered" or "threatened," regardless of metrics outlined in the recovery plan. For example, we may determine that due to positive demographic, ecological, or conservation gains, the species' viability is robust enough that it no longer meets the definition of an endangered species or a threatened species. In this case, although one of the recovery targets outlined in the wood stork recovery plan has not been fully achieved as specifically described in the recovery plan, we have determined that the current and projected future viability of the wood stork reflected by range expansion, demonstrated adaptive capacity, breeding population trends, total breeding population number, and productivity, indicates the species has recovered to the point that listing under the Act is not warranted (see *Recovery Criteria and Determination of the Southeast U.S. DPS of the Wood Stork's Status* for details).

(2) *Comment:* Several commenters stated that wood storks should not be delisted until Everglades restoration goals have been achieved.

Our Response: As stated above, a determination of whether a species meets the Act's definitions of "endangered" or "threatened" is made solely on an analysis of the best scientific and commercial data available. The wood stork's wide distribution, expanded breeding range, breeding population numbers, and productivity indicate that the population has recovered, irrespective of Everglades restoration goals. Regardless, delisting the wood stork will not reduce the Service's focus and involvement in Everglades' restoration. For example, the Service is committed and invested in the Comprehensive Everglades Restoration Plan (CERP), which is a Federal, State, Tribal, and local partnership. One of the CERP's goals is restoring a robust and successful wood stork breeding population in the Greater Everglades (Everglades National Park, Water Conservation Areas, Big Cypress, Fakahatchee Strand, Picayune Strand, and Corkscrew Swamp). The CERP initiative was provided through guidance by Congress, which was authorized by the Water Resources Development Act of 2000 (33 U.S.C. 2201 *et seq.*), and continues to be a national conservation priority for the Service. This initiative will continue regardless of the wood stork's status under the Act.

(3) *Comment:* We received several comments suggesting that, without protections provided under the Act, State regulatory mechanisms and those related to Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) section 404 permitting would be inadequate to protect wood stork foraging and nesting habitat. Specifically, one commenter stated that the State of Florida was unlawfully excluding certain waterways from CWA section 404 regulation by continuing to apply the Navigable Waters Protection Rule, which was vacated in August 2021. They also expressed concern that, due to the transfer of CWA authority to the State of Florida, National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis would not occur for individual project permits, and that the State may not be able to adequately fulfill the requirement under section 7 of the Act to ensure that permitted activities do not jeopardize listed species or adversely modify critical habitat.

Our Response: The comment regarding Florida's implementation of the CWA and NEPA is not relevant given the current regulatory landscape.

On February 15, 2024, a Federal court in the District of Columbia issued a ruling formally vacating the EPA's December 2020 decision to allow the State of Florida to assume permitting authority for section 404 of the CWA and the Service's biological opinion related to that decision. Accordingly, implementation of the CWA and NEPA again rests with the EPA and the U.S. Army Corps of Engineers. However, the United States is currently appealing the District Court's decision.

On September 8, 2023, a final rule (88 FR 61964) became effective that amended the "Revised Definition of 'Waters of the United States'" to conform key aspects of the CWA regulatory text to the U.S. Supreme Court's May 25, 2023, decision in the case of *Sackett v. EPA*, 598 U.S. 651 (2023). The revised definition means that some of the previously jurisdictional wetlands used by wood storks are now considered non-jurisdictional under the CWA and may not receive the same level of Federal oversight under the CWA than prior to the rule change. In addition, recent changes in North Carolina State regulations mirror those resulting from the *Sackett* decision, and mean that isolated wetlands in North Carolina are no longer State-regulated. However, many wetland types that support wood storks are still considered jurisdictional and will therefore continue to receive protections from the CWA after the species is delisted and protections of the Act are removed. In addition, the *Conservation Efforts and Regulatory Mechanisms* section below (see also Service 2024, chapter 5.3) describes multiple mechanisms that are in place that positively impact wood storks and the wetland habitats on which they depend, regardless of the wood stork's status under the Act. We evaluated the wood stork's status and found that the species has recovered, and that any forces acting on the species now or projected to do so in the future (including the effect of dynamic regulatory mechanisms) are not expected to negatively influence the wood stork's viability to such an extent that it would meet the definition of a threatened or endangered species. In summary, we expect that current conservation measures, which are unrelated to the Act and provided by Federal and State regulatory mechanisms, are adequate to maintain wood stork viability into the foreseeable future.

Further, the wood stork post-delisting monitoring plan includes a 10-year monitoring window with protocols to specifically monitor changes to wood

stork nesting colony wetlands. Post-delisting monitoring will allow us to track the wood stork's status for at least 10 years to ensure its viability is maintained. Regardless, at any time the Service may decide to reevaluate the wood stork's status.

(4) *Comment:* Several commenters stated that the northern breeding range expansion may not be sustainable into the future. The commenters specifically had concerns that potential threats such as increased pollution and predation, sea level rise, and storm damage, and other factors such as prey availability, had not been adequately assessed in the northern part of the wood stork's current range.

Our Response: Concurrent with the population decline in the South Breeding Region (*i.e.*, southern Florida), the wood stork breeding range expanded northward into the Central, Northeast, and Northwest Breeding Regions (*i.e.*, central and northern Florida, Georgia, and South Carolina; see figure 1) from the 1960s through the 1980s, and then into North Carolina in 2005. This northward expansion has continued since, with increasing numbers of colony sites and nesting pairs becoming established in the Northeastern and Northwestern Breeding Regions annually (Service 2024, chapter 3.1). This northward expansion has been occurring increasingly since the 1960s, indicating that the establishment of these northern regions as part of the wood stork's breeding range is sustainable and will continue to positively contribute to the overall status of the species.

Many wading bird species similar to the wood stork have historically bred, and continue to successfully breed, within the northern extent of the wood stork's current range. As described under the *Distribution, Ecology, and Life History* section below, nest colony site turnover is a natural ecological phenomenon for wood storks, as it is for many other species of colonial nesting waterbirds. Wood storks have historically made use of new and different geographical locations to nest and forage to exploit optimal habitat conditions from year to year. The best scientific and commercial data available indicate that the northern part of the wood stork's breeding range supports a highly productive segment of the wood stork breeding population, and suitable habitat there is abundant. We have no evidence to indicate that the species responds differently in the northern part of the DPS, nor do we have any other reason why wood storks would not continue to exploit the northern part of

the DPS for nesting and foraging habitat into the future.

Further, the mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing (or maintaining a currently listed species on the Federal Lists of Endangered and Threatened Wildlife and Plants) is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of an endangered or threatened species under the Act. We examined the effects of multiple wood stork stressors including storms (hurricanes), predation, and contaminants (pollution) in our SSA report (Service 2024, chapter 5.2). However, the best scientific and commercial data available does not indicate that these stressors have negative population-level impacts on wood storks now or into the foreseeable future. We also assessed the threat of sea level rise and incorporated those impacts into our projections of future resiliency for the wood stork, and that assessment included the northern part of the species' range (see *Future Condition* below; and Service 2024, chapter 6).

(5) *Comment:* Several commenters expressed concern about the negative impacts of sea level rise on salt marsh habitat availability, the potential shift in the biotic community of salt marsh habitat, and the resulting impact to wood storks.

Our Response: As presented in our SSA report (Service 2024, chapter 6) and in this final rule, we evaluated the potential effects of sea level rise on the wood stork, including impacts on salt marsh habitat, and determined that the best scientific and commercial data available at this time does not indicate that sea level rise is negatively affecting or will negatively affect wood storks to the extent and magnitude that would result in an endangered or threatened status for the species. As a result of sea level rise, marsh habitat may be lost in some areas, and may migrate upslope in other areas (Kirwan et al. 2016a, p. 253), and marsh migration models that apply to the region where wood storks breed actually project an overall net gain in marsh habitat (Kirwan et al. 2016b, p. 4366). Further, habitat availability does not appear to be limiting wood stork resiliency currently, and ample suitable wood stork habitat will likely remain available even if high projections of sea level rise in the future prove accurate (Service 2024, chapter 6.2).

(6) *Comment:* Several commenters suggested that we overemphasized the

importance of urban wetlands to wood storks in our proposed delisting rule.

Our Response: Our discussion in the proposed rule was intended to acknowledge that wood storks use disturbed wetlands including those in urban and suburban areas as well as natural wetlands, rather than to overstate the importance of these wetlands to maintaining wood stork viability. While wood storks forage, breed, and roost in natural wetland habitats, they have also adapted to artificial and even highly disturbed wetlands, which can provide novel and supplementary breeding habitat and foraging opportunities (Evans et al. 2022, entire). Wood storks do not discriminate by wetland type for use in foraging, breeding, and sheltering, but they do discriminate in relation to available resources and overall habitat conditions. Urban and suburban habitats meet the wood storks' needs in many areas and tend to augment habitat opportunities for the species rather than detract.

(7) *Comment:* One commenter stated that while population numbers and range expansion confirm that delisting is the appropriate action, threats to the wood stork remain and necessitate the post-delisting monitoring of wood stork populations and their wetland habitats.

Our Response: A determination that the wood stork does not warrant listing under the Act does not mean that no threats remain; rather, it means that the threats are ameliorated such that the species is not in danger of extinction throughout all or a significant portion of its range or likely to become so within the foreseeable future. Additionally, under section 4(g)(1) of the Act, we are required to monitor all species that have been recovered and delisted for at least 5 years post-delisting; in the case of the wood stork there will be a 10-year monitoring period. The ten-year period was chosen because of the species' long life span (more than 22 years documented in the wild), long period of parental care (80 days), long age-to maturity (reaching reproductive age at 4 years), and a potential lag in time to detect changes in nesting population trends in response to changes in habitat or other threats. This period will allow us to monitor two generations of wood storks to detect any demographic trend changes related to any threats or conditions on the landscape. This will also allow us to assess any potential impacts of construction and implementation of hydrological infrastructure projects (e.g., CERP projects in South Florida). On February 15, 2023, we published our proposed rule to delist the wood stork (88 FR

9830) and announced a public comment period for the proposed rule and the availability of a draft post-delisting monitoring (PDM) plan for public review and comment. The wood stork PDM plan includes population monitoring, as well as the monitoring of physical and environmental changes to colony sites with respect to regulatory protections and impacts. Following final delisting, we will meet with the Wood Stork Research and Monitoring Working Group to discuss implementation details of the PDM plan.

(8) *Comment:* Several commenters expressed concern over the extent to which climate change threatens the wood stork through increased evapotranspiration, hydrology alteration, and the consequent risk of predation.

Our Response: We reviewed the best scientific and commercial data available when analyzing the threat of climate impacts to wood storks. We summarize the effects of potential increased evapotranspiration, hydrology alteration, and subsequent nest predation on wood storks under *Threats*, below, as well as in our proposed rule (88 FR 9830, February 15, 2023). These factors will have negative effects on wood storks in some cases (e.g., prolonged drought that decreases wood stork prey populations), and positive effects in others (e.g., periods of drying that concentrate wood stork prey (Evans et al. 2023, entire)), but the best scientific and commercial data available do not indicate that they are drivers of wood stork viability. Further, we evaluated the current and future condition of the wood stork, including effects to the wood stork associated with the ecological dynamics of climate change, and determined that the wood stork does not meet the definition of a threatened or endangered species.

(9) *Comment:* One commenter stated the Service failed to adequately explain the delisting determination given expected declines in wood stork resiliency projected in our future scenarios analysis in the SSA report.

Our Response: As the commenter stated, in version 1.0 of our SSA report (Service 2021, entire), we projected declines in future resiliency for wood storks based on impacts to habitat within the current core foraging area (or CFA, which consists of the currently-occupied breeding colony sites and the immediately adjacent habitat where foraging by wood storks is most concentrated) resulting from sea level rise, development, and conservation mechanisms. However, we also acknowledged that our model did not account for important factors—such as

the current and future availability of suitable occupied wood stork habitat outside of the current CFA, and the well-documented behavioral and ecological plasticity the species has demonstrated—that would likely lead to the establishment of new colonies and future population growth and expansion (Service 2021, table 48). As a result of considering both our projected declines related to habitat within the current CFA footprint, as well as other factors such as the wood stork's demonstrated behavioral plasticity evidenced by its ability to adapt to changing environmental conditions and exploit novel habitat types and food resources, the abundance of suitable habitat, and that habitat does not appear to be limiting wood stork resiliency, in our proposed rule we found the wood stork not to be in danger of extinction now nor likely to become so in the foreseeable future (88 FR 9830, February 15, 2023).

For this final rule, we have updated our future condition analysis in version 1.1 of the SSA report (Service 2024, chapter 6) by incorporating the latest sea level rise projections and the most recent wood stork breeding and abundance data, as well as additional analyses of habitat availability as affected by potential sea level rise, and demographic factors such as productivity requirements and colony site turnover. These additional evaluations further reinforce our assessment that, despite habitat impacts within the current footprint of the CFA, the wood stork's future viability will not significantly decline such that it would meet the definition of a threatened or endangered species (see further discussion under *Future Condition and Status Throughout All of Its Range*, below).

(10) *Comment:* One commenter expressed concern about our evaluation of wood stork viability throughout a significant portion of its range. The commenter stated, among other things, that the Service implied that the South Breeding Region may have a different status from the others but failed to present evidence that the region's status is more stable than implied by the unachieved recovery target.

Our Response: We have revised for clarity our discussion of the wood stork's status below, under *Status Throughout a Significant Portion of Its Range*. Specifically, we clarify that while the 5-year average productivity rate in the South Breeding Region is lower than in other regions, this difference does not indicate that the South Breeding Region is a portion of

the range that is in danger of extinction now or in the foreseeable future.

(11) *Comment:* One commenter expressed concern over the threat of invasive Asian swamp eels to wood stork habitat in the Everglades.

Our Response: The Service agrees that Asian swamp eel is an emerging issue that could pose a future threat to the wood stork (Service 2018, entire) because Asian swamp eels have been observed to outcompete and reduce populations of forage fish species that wading birds, including wood storks, prey upon (Pintar et al. 2023, entire). Current data indicates that the Asian swamp eel's geographic distribution in the United States is limited by thermal tolerance (Service 2018, p. 4). Therefore, while the Asian swamp eel is currently present in some areas of Florida, it is not present in the other States that comprise most of the wood stork's range, and the long-term establishment of its invading populations may never extend north of Florida.

At this time, it is not clear whether an Asian swamp eel invasion would significantly impact prey resources of the wood stork to the extent that would result in wood stork population decline. Wood stork populations will be

monitored for at least 10 years after the species is delisted, per the PDM plan. Accordingly, we will monitor the threat of Asian swamp eel invasion, and we are instructed by the Act to make prompt use of our emergency listing authority to prevent a significant risk to the well-being of any recovered species. However, at this time the best scientific and commercial data available do not indicate that Asian swamp eels pose a threat to wood storks at the scale and magnitude that would put the wood stork at risk of extinction now or in the foreseeable future.

Background

Below, we present a review of the taxonomy, life history, ecology, and overall status of the wood stork, referencing data where appropriate from the SSA report that was finalized for the species in April 2021 (Service 2021, entire), updates to those data since 2021 that were included in the proposed rule (88 FR 9830, February 15, 2023), and new data and analyses since 2021 that were incorporated into the updated SSA (Service 2024, entire).

Distribution, Ecology, and Life History

The historical range of the U.S. breeding population of the wood stork

(*Mycteria americana*) encompasses the southeastern U.S. coastal plains of Alabama, Florida, Georgia, and South Carolina, and the current range has expanded to also include Mississippi and North Carolina. Genetic analyses indicate that these birds represent a single population that shows no evidence of discrete subpopulations (Lopes et al. 2011, p. 1911; Stangel et al. 1990, p. 618; Van Den Bussche et al. 1999, p. 1083; Zimmerman 2023, p. 1). When the wood stork was listed, breeding primarily occurred in south and central Florida (19 colonies), with only limited breeding activity occurring in north Florida (5 colonies), coastal Georgia (2 colonies), and South Carolina (1 colony). Since listing (specifically, from 1984 to 2022), wood storks have nested at 332 different locations. Currently, at least 100 breeding colonies of various sizes are annually active (e.g., in 2022 there were 51 in Florida, 22 in Georgia, 28 in South Carolina, and 5 in North Carolina). Breeding colonies are clustered into four regions, hereinafter referred to as the South, Central, Northwest, and Northeast Breeding Regions (Service 2024, chapter 3.2; figure 1).

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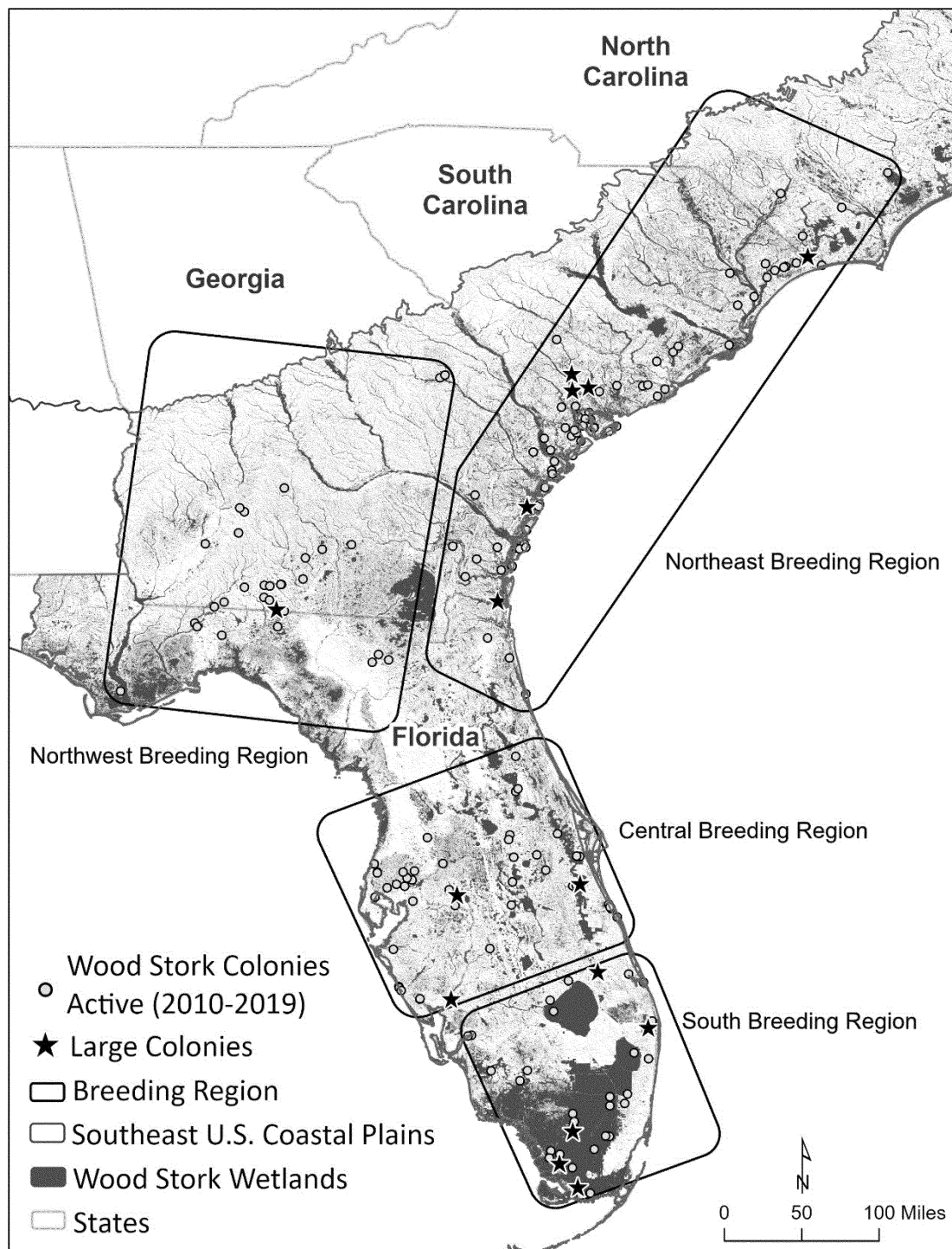


Figure 1. Wood stork breeding regions, active colony sites, large colony sites, and wetland habitat suitable for wood stork occupancy.

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Wood storks are colonial breeders, typically nesting with conspecifics (other members of their own species) and other wading bird species in wetlands within the southeastern U.S. coastal plains landscape that contain

sufficient wetland foraging habitats nearby. Suitable foraging wetlands generally contain aquatic prey that is concentrated by decreasing water levels (e.g., tidal creeks at low tide, ephemeral ponds, edges of ponds and lakes, shallow wetlands, and forested flood plains during seasonal dry down). Primary prey species vary geographically and include fish (predominantly), crustaceans, amphibians, insects, snails, and reptiles

(Coulter et al. 2020, unpaginated). Wood stork nesting colonies also occur in natural wetlands and within human-influenced areas, including impounded, managed, enhanced, reconfigured, and manmade wetlands; in water treatment wetlands; and on small islands (Coulter et al. 2020, unpaginated). A large proportion of the nesting colonies in Georgia and South Carolina occur in proximity to the expansive coastal salt marshes in these States, and foraging

during the breeding and post-breeding season depend upon both freshwater wetlands as well as the highly productive estuarine and salt marsh wetland ecosystems (Coulter et al. 2020, unpaginated).

Wood stork nest colony sites are, as they are for most colonial waterbirds, ephemeral in nature, and colony site turnover (*i.e.*, the process by which old colony sites are abandoned and new colony sites are established) is a common trait in wading bird ecology (Frederick and Meyer 2008, entire). Colony site turnover occurs periodically, such that conditions becoming less favorable at one colony site often leads to the establishment of new colony sites (Clem and Duever 2019, p. 370; Hall et al. 2017, p. 52). However, some colony site transitions are gradual and may take years before completion (Frederick and Ogden 1997, pp. 320–321), and large colonies tend to have greater longevity (Frederick and Meyer 2008, p. 16; Tsai et al. 2016, p. 643). Wood stork nesting colony turnover has occurred historically, indicating that wood storks will continue to move to new colony locations when currently occupied colony sites become less optimal than suitable habitat in other potential colony sites (Service 2024, chapter 2.7.1).

Wood storks are a relatively long-lived species, with the maximum age of more than 22 years documented in the wild (Coulter et al. 2020, unpaginated). Wood storks generally breed annually (typically one brood per season) and exhibit extensive parental care, with nesting and brooding lasting approximately 4 months of the year. Typically, wood storks initiate breeding at 4 years of age (Coulter et al. 2020, unpaginated). Breeding seasonality varies regionally and is related to rainfall amounts and timing. Wood storks typically breed during periods when wetland water levels are decreasing and wetlands are thus drying down, which concentrates prey during the nesting period (Coulter et al. 2020,

unpaginated). After the nesting period when wood storks are no longer associated with the foraging wetlands near their nesting colony site, they can exhibit intra-regional and regional movements in response to environmental conditions (*e.g.*, changes in the availability of shallow foraging habitat) (Coulter et al. 2020, unpaginated).

A thorough review of the taxonomy, life history, ecology, and overall viability of the wood stork is presented in the SSA report (Service 2024, entire; available at <https://ecos.fws.gov/ecp/species/8477> and at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2022–0099).

Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species’ likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that

information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan.

Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all the guidance provided in a recovery plan.

The recovery plan for the wood stork outlines the following criteria that we estimated could, if met, result in a determination that the wood stork no longer warrants listing under the Act (Service 1997, p. 17):

- *Criterion 1:* An annual average calculated over 5 years (5-year average) of 10,000 nesting pairs (which constitutes 50 percent of the historical population).
- *Criterion 2:* A 5-year average regional productivity (in each of four breeding regions) of greater than 1.5 chicks per nest per year.
- *Criterion 3:* As a subset of the 10,000 nesting pairs, a 5-year average of 2,500 or more successful nesting pairs must occur in the Everglades and Big Cypress systems (*i.e.*, the South Breeding Region).

Criterion 1 for delisting, which is a 5-year average of 10,000 nesting pairs, has been met since 2016 (table 1).

TABLE 1—MOVING 5-YEAR AVERAGES OF NESTING PAIRS IN THE U.S. WOOD STORK BREEDING POPULATION (*i.e.*, ACROSS THE ENTIRE DPS)

[As indicated by nest counts from 2014 (year of reclassification) to 2022. Numbers in **bold** are those that meet the recovery criterion.]

2014	2015	2016	2017	2018	2019	2020	2021	2022
9,226	9,941	10,171	10,650	11,012	10,582	*10,713	*11,139	*11,224

* 2020 COVID protocols precluded a survey of all the nesting colonies in 2020. Thus, the averages in 2020, 2021, and 2022 are 4-year averages using the appropriate 5-year timeframe but lacking data from 2020.

We note that criterion 1 also implies that the wood stork should exhibit a positive population growth trend to

reach a breeding population of 10,000 nesting pairs. The long-term trend (1974 to 2019) shows an increase in nesting

pairs at a rate of 153 pairs per year. The current trend during the past 10 years (5-year averages from 2010 to 2019)

shows an increase in nesting pairs at a rate of 344 pairs per year.

Criterion 2 for delisting is a 5-year average productivity of 1.5 chicks

fledged per nest per year in each breeding region. This productivity metric has been achieved or exceeded in

each region except for the South Breeding Region since 2018 or earlier (table 2).

TABLE 2—MOVING 5-YEAR AVERAGES OF WOOD STORK PRODUCTIVITY (CHICKS FLEDGED PER NEST PER YEAR) BY BREEDING REGION, 2014–2022

[Note: No productivity data was collected for the Northwest Breeding Region in 2022. Numbers in bold are those that meet the recovery criterion (1.5 chicks fledged/nest/year).]

Breeding region	2014	2015	2016	2017	2018	2019	2020	2021	2022
Northeast	1.6	1.7	1.7	1.9	2.0	1.9	*1.8	*1.8	*1.8
Northwest	1.3	1.3	1.0	1.2	1.5	1.7	*1.6	*1.6	
Central	1.4	1.5	1.5	1.7	1.7	1.8	*1.8	*1.8	*1.6
South	0.7	0.8	0.7	1.0	1.0	0.8	*0.8	*1.1	*0.8

* 2020 COVID protocols precluded a survey of all the nesting colonies in 2020. Thus, the averages in 2020, 2021, and 2022 are based off incomplete data sets, but represent the best available information.

Criterion 3, which requires that a minimum of 2,500 pairs (5-year average) nest in the South Breeding Region, has

been achieved in each of the past 6 years (2017–2022) (table 3).

TABLE 3—MOVING 5-YEAR AVERAGES OF WOOD STORK NESTING PAIRS IN THE SOUTH BREEDING REGION, 2012–2022
[Numbers in bold are those that meet the recovery criteria.]

2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
2,116	2,650	2,021	2,048	1,941	3,033	2,895	2,576	2,722	3,088	2,786

Although criterion 2 has not been fully satisfied as specifically defined in the recovery plan, we conclude that the essential intent of this recovery goal has been achieved, mainly due to new information that has become available since the recovery criteria were established.

When the wood stork recovery criteria were originally defined, there was a focus on breeding success in the South Breeding Region, given its historical importance to the species as the core of the entire breeding population. However, since then, wood storks have adapted to use new wetland complexes and habitat types, and have expanded their breeding range north to include three new breeding regions. Coastal salt marsh and the adjacent freshwater wetlands of the coastal plain in Georgia, South Carolina, and North Carolina are now exploited by wood storks and support a large part of the breeding population (more than 5,000 pairs annually). Therefore, while productivity in the South Breeding Region is slightly below the target defined in the recovery plan, wood storks are now reproducing successfully and using a combination of wetland types in multiple regions additional to where they bred historically, which has led to consistently higher productivity throughout most of their range than that targeted by the recovery criterion (table 2).

The coastal wetlands of Georgia, South Carolina, and North Carolina

provide year-round foraging for wood storks, as salt marsh prey concentrations are tidally dependent and less impacted by the environmental factors that dictate prey availability in the freshwater wetlands. Many South Breeding Region wood storks disperse north during the post-breeding season to the freshwater and coastal saltmarsh of Georgia and South Carolina and others to coastal plain wetlands of central Alabama and northeastern Mississippi (Service 2024, chapters 2.5.4, 2.6, and figure 5).

Wetlands do not appear to be limiting wood stork resiliency. The U.S. southeastern coastal plain's 48 million acres of wetlands are abundant and widespread from Florida north to Virginia and west to Mississippi and represent the largest concentration of estuarine and palustrine wetlands in the continental United States (Sucik and Marks 2015, p. 11). The combination of expansive freshwater wetlands and salt marshes in the Northeast Breeding Region provides previously (pre-1980) unexploited breeding season food resources and nesting habitat that result in higher productivity. Approximately one third of the number of wood stork colonies that exist today existed at the time that the recovery criteria were established in 1986, as multiple breeding colonies are now present in Georgia, North Carolina, and South Carolina, where few or none had existed historically (figure 1). The expansion of the wood stork's breeding range, and the species' novel exploitation of other

abundant wetland habitat types for breeding, indicate that it is no longer as dependent on the Everglades system as once thought. Presently there are four breeding regions that contribute equally to its resiliency and viability. In addition, central and south Florida provide breeding and overwintering habitat for wood storks comparable to that which the Everglades provides in the South Breeding Region and are contributing equally to recovering a robust wood stork breeding population.

Wood stork productivity in the South Breeding Region is highly variable on an annual basis, and under the 5-year average target set originally as a recovery criterion; however, the target for this metric has been met or exceeded in all other breeding regions, and the wood stork is much less dependent on the South Breeding Region than it was historically. Further, the productivity rate of 1.5 chicks/pair was targeted in the original 1986 wood stork recovery plan to ensure sufficient population growth at a time when the population was at its lowest. This target was estimated based upon European white stork demographics because adequate wood stork demographic data were not available at the time. Conceptually, to maintain a population at a stable level, a productivity rate of 2.0 (two chicks fledged per nest) would be needed to keep a population stable, assuming two fledglings survive to breeding age and each pair of adults will reproduce only once in their lifetime. This scenario

would result in one-to-one replacement of adults by the new generation. Wood storks are relatively long-lived and generally breed annually, and thus most individuals have multiple chances to replace themselves. As such, a wood stork productivity rate near or even below 1.0 should also lead to a stable or slow-growing population. For example, the 5-year average productivity that had been maintained at the time of recovery for both the bald eagle and the brown pelican, two species similar to the wood stork in diet, aquatic habitat, and longevity, did not exceed 0.9 (74 FR 59444, November 17, 2009; 72 FR 37346, July 9, 2007). Like the wood stork, not all the demographic metrics originally identified for the brown pelican and bald eagle were met as specifically defined in their recovery plans, and yet these species both have fully recovered and continue to thrive today.

In addition, the averaging metric for productivity can mask large annual reproductive gains, especially in areas like the South Breeding Region where wood stork productivity can naturally fluctuate greatly among years based on natural cycles and normal environmental stochasticity. It appears that productivity is sufficient for wood stork viability, as it continues to support a growing population across the wood stork's range. We consider the population's wide distribution, breeding population numbers, and productivity as indicators that the population is recovered and sustainable. Thus, although criterion 2 has not been fully realized in the manner specifically identified in the recovery plan, we conclude that the intent of the criterion that productivity is sufficient for the long-term viability of the wood stork has been satisfied. Due to the overall range and breeding range expansion; ability to move to new breeding locations when a colony site is no longer suitable; continued population growth; four equally important breeding regions that greatly increase redundancy, representation, and resiliency; and use of diverse and extensive wetland habitats throughout the coastal plain of the southeast U.S., it does not appear that foraging, overwintering, or breeding habitat is a limiting factor to the resiliency of the wood stork. As discussed, we consider the population's wide distribution, ability to utilize a mosaic of wetlands (for foraging, nesting, and roosting), population numbers, and productivity as indicators that the threats have been reduced such that the population is recovered and sustainable.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, we issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 23919). This final rule is now in effect and is incorporated into the current regulations. Our analysis for this decision applied our current regulations. Given that we proposed delisting this species under our prior regulations (revised in 2019), we have also undertaken an analysis of whether the decision would be different if we had continued to apply the 2019 regulations and we concluded that the decision would be the same. The analyses under both the regulations currently in effect and the 2019 regulations are available on <https://www.regulations.gov>.

The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive

effects. The determination to delist a species must be based on an analysis of the same five factors.

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; "M-Opinion," available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the Service can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the

foreseeable future on a case-by-case basis, using the best scientific and commercial data available and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data available regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be delisted. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess wood stork viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions

about the species' future condition, including responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best scientific and commercial data available to characterize viability as the ability of a species to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2022–0099 on <https://www.regulations.gov>.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In addition, the SSA report (Service 2024, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species.

The following is a summary of this status review and the best scientific and commercial data available gathered since that time, both of which have informed this decision.

Species Needs

Wood storks are a wetland-dependent species that use a wide variety of freshwater, brackish, and estuarine wetlands for nesting, feeding, and roosting throughout their range (Coulter et al. 2020, unpaginated). Wood storks feed on many aquatic animal species, but primarily fish such as sunfish (Coulter et al. 2020, unpaginated). They forage most efficiently in shallow wetlands where prey is concentrated, and as such their intra-regional movements during the breeding and non-breeding seasons are typically in response to the availability of shallow wetlands (Coulter et al. 2020, unpaginated). Local hydrologic conditions also correlate to annual nesting effort (Klassen et al. 2016, pp. 1450–1460) and breeding success.

Wood storks are colonial breeders, and nest in trees over or surrounded by water in natural and human-influenced freshwater, brackish, and estuarine habitats (Rodgers et al. 1996, pp. 18–19). Breeding colonies occur within landscapes containing sufficient shallow wetlands for foraging, in proximity to wetlands with suitable emergent or island tree and shrub species for breeding (nest substrate) as well as for roosting outside of the breeding season. Wood storks use both

native and nonnative trees for nesting substrate (Rodgers et al. 1996, pp. 2–17).

Wood storks feed in natural, managed, created, and human-altered wetlands, both freshwater and estuarine, where water depths are appropriately shallow and the habitat is not densely vegetated (Coulter et al. 2020, unpaginated). The presence of wood storks in human-influenced landscapes and wetlands has become common (Evans and Gawlik 2020, p. 1), and wood storks will make use of any wetland (natural or anthropogenic) that produces good foraging opportunities.

Threats

Threats to wood storks are described in detail in the SSA report (Service 2024, chapter 5). The threats that affect the species at the population level are habitat loss, conversion, and degradation (acting on populations currently and into the future), and the effects of warming temperatures, drought, precipitation changes, and sea level rise (which act on populations primarily in the future).

Habitat Loss, Conversion, and Degradation

Land change and conversion due to urban and suburban development, agriculture, silviculture, and mining impact wood storks through habitat fragmentation, loss, degradation, and conversion (Coulter et al. 2020, unpaginated; Service 2024, chapter 5). This threat directly reduces the availability and quality of breeding and roosting habitat, and indirectly impacts foraging habitats and food resources (Coulter et al. 2020, unpaginated). One of the primary reasons for the historical decline of the wood stork was the dredging of canals and draining of wetlands to accommodate the settlement of south Florida, promote agriculture, and provide means of flood control, which altered the hydrologic regimes of the Everglades and Big Cypress ecosystems (Ogden and Nesbitt 1979, p. 512; Ogden and Patty 1981, pp. 99–100; Service 1997, p. 10). Human-caused changes to wetland hydrology (annual cycle and water table levels) and drainage of wetlands throughout the wood stork's range resulted in degradation, fragmentation, and loss of habitat available to wood storks. The rate of wetland conversion has slowed from that which occurred historically (Lang et al. 2024, pp. 6–7), likely due primarily to laws and regulations designed to avoid and minimize impacts to wetlands; however, wetland loss continues today, including an increase during the past decade when compared

to the previous decade (Lang et al., 2024, p. 9).

Other factors that contribute to degradation of wood stork habitat include increased water consumption; construction of stormwater management ponds, lakes, and flow-ways; changes in hydrological regimes that alter the water table; and reduced fire frequency that creates drier wetland conditions and can exacerbate the encroachment of woody vegetation into wetlands. However, the best scientific and commercial data available do not indicate that these factors are occurring at such a magnitude to cause an overall population decline for wood storks.

Despite the historical and ongoing threats to wetland habitats, natural wetlands of the southeastern U.S. coastal plains are extensive (Service 2024, chapter 6.2; Lang et al. 2024, p. 10). In addition, wetland restoration efforts are established and underway throughout the wood stork's range, and loss of natural wetlands is avoided, minimized, and mitigated through existing wetland laws and regulations (Service 2024, chapter 5.3). Further, wood storks use habitat opportunistically and exploit natural and human-influenced urban, suburban, rural, and agricultural environments, and even use human-created wetlands for foraging, roosting, and nesting (Evans and Gawlik 2020, p. 1). Wood storks target specific wetland environmental conditions that afford advantageous foraging, roosting, or breeding opportunities, regardless of whether a wetland is natural or manmade. The abundance and distribution of human-influenced wetlands has increased, and wood storks can be found foraging and nesting in these wetland types throughout their range. Though the body condition of chicks produced in natural wetlands were found to be slightly healthier than those produced in urban environments, that of nesting adults does not differ, and overall urban wetlands appear to help boost wood stork productivity during periods of suboptimal conditions in nearby natural wetlands (Evans and Gawlik 2020, pp. 1–2, 5).

Climate

The Intergovernmental Panel on Climate Change (IPCC) has devised a system to project plausible future greenhouse gas concentrations in various scenarios (termed “representative concentration pathways” or RCPs). Climate predictions suggest overall warming temperatures under all greenhouse gas emission scenarios throughout North America, including throughout the

range of the wood stork (IPCC 2022, pp. 4–19). An increase of 3.6 degrees Fahrenheit (2 degrees Celsius) compared to pre-industrial levels (IPCC 2019, pp. 23–24) is more likely than not to be exceeded by the year 2100 under the RCP4.5 climate scenario, and likely to be exceeded under the RCP6.0 and RCP8.5 scenarios. Some habitat and ecological changes, such as sea level rise, increased intensity of storm events, and range expansion northward beyond the historical breeding range, have already been observed.

Warming temperatures are likely one of the factors that is leading to the expansion of the wood stork's breeding range beyond its historical boundaries (including breeding in North Carolina), as has been documented for many other bird species in Florida, North America, and other parts of the world (Hitch and Leberg 2007, p. 534).

Climate effects are causing a variety of changes to the various ecosystems and wetland habitats that wood storks depend upon throughout their life cycle, thereby having the potential to affect the wood stork's demographic rates (nest success, and juvenile and adult survival) and resulting viability.

Warming may contribute to changes in nesting phenology (timing) and the extension of the breeding season, as evidenced by asynchronous nesting that is being now documented throughout the wood stork's breeding range. For example, wood storks may have more opportunity to renest after previously failed attempts, or to nest later in the season in order to take advantage of optimal habitat conditions in other areas of the range. Warming temperatures may also affect hurricane and tropical storm intensity, precipitation changes (annual and large rain events), drought, and sea level rise, all of which are factors that may impact wood stork habitat and, in turn, wood stork resiliency. However, effects of climate may have both negative and positive influences on wood stork resiliency.

Changes in hurricane patterns—The warmer climate is projected to decrease the frequency of tropical cyclones but increase the intensity of these events when they occur in the Atlantic Basin (Collins et al. 2017, p. 610). Direct mortality of wood storks due to tropical storm events is not common, and although damage to nesting vegetation at colony sites has been documented to occur, the large amount of rain generally benefits colony site vegetation, and nesting generally continues in following years (Cook and Baranski 2019, p. 1). In many cases, wood storks will have a very productive breeding season in the year following a hurricane because the

additional precipitation improved wetland hydrologic conditions and led to larger prey base for the following breeding season (Cook and Baranski 2019, p. 1). Hurricanes also commonly act as an erosional agent and deliver significant volumes of sediment to the marsh surface, which could aid wood stork resiliency by increasing vertical accretion of salt marsh habitat (Staro et al. 2021, p. 1). The best scientific and commercial data available do not indicate that hurricane impacts are limiting wood stork resiliency, nor do we expect that they will in the future.

Changes in precipitation—An overall increase in rainfall is expected throughout much of the wood stork's range. Relative to 1981–2010, the 50th percentile (median) for annual mean precipitation under RCP4.5 and RCP8.5 is expected to increase in the South Atlantic–Gulf Region in 2050–2074 by a relatively small amount (0.2 to 0.3 in (5.1 to 7.6 millimeters (mm)) per month) (Alder and Hostetler 2013, entire). However, scaled-down models indicate that precipitation increases will vary across the region. The timing and amount of precipitation in wood stork habitat has always had a strong influence on wood stork prey development, availability, and dispersion. Adequate precipitation can help maintain good hydrologic conditions and offset drought conditions, which can help bolster wood stork survival and productivity. However, excessive rainfall can have a negative impact by dispersing prey and effectively inhibiting wood stork nutrient consumption, and this phenomenon is magnified during the breeding season in the South Breeding Region when it can result in nest abandonment and/or reduced chick survival caused by inadequate provisioning of chicks by adults (Cook and Baranski 2021, p. 5). Excessive rainfall deficit on the other hand, especially in combination with warming temperatures, could contribute to drying and drought conditions, which are discussed below. While precipitation is likely one of the primary drivers that cause segments of the wood stork population to shift or migrate depending upon local and regional habitat conditions, the best scientific and commercial data available do not indicate that precipitation impacts are limiting wood stork resiliency, nor do we expect them to in the future.

Drought/Drying—Rising temperatures are expected to increase evaporation, meaning that wood storks could face increased drought-like conditions (Alder and Hostetler 2013, entire; IPCC 2023, p. 5). Prolonged drought

conditions generally lead to poor nesting success and productivity (Borkhataria et al. 2012, p. 524; Gaines et al. 2000, p. 64). In addition, drought conditions can increase wood stork colony predation by making it easier for terrestrial predators to access nests and chicks (Coulter et al. 2020, unpaginated; Gabel et al. 2021, pp. 1–2). However, initially drought periods can consolidate and increase the availability of prey and can therefore be beneficial to wood storks (Service 2024, chapter 6.3). Dry conditions may concentrate prey and lead to increased wood stork productivity in a given year, but a multiyear drought could lead to lower wood stork productivity if prolonged low-water conditions inhibit the regeneration of prey species. This type of hydrological regime can lead to a boom or bust nesting dynamic, where years with poor hydrologic conditions result in many unsuccessful nesting efforts, while other years with optimal hydrologic conditions lead to large nesting events and high productivity (Frederick and Ogden 2001, pp. 484–485; Frederick et al. 2009, p. 85). Dry conditions can result in both positive and negative outcomes for wood storks, and the best scientific and commercial data available do not indicate that drought is limiting wood stork population resiliency, nor do we expect it to in the future.

In summary, changes in hurricane and precipitation patterns, hydroperiod, and drying conditions may influence habitat availability and associated wetland forage resources for wood storks, but that influence will vary considerably relative to local landscape conditions. For example, the type, abundance, underlying topography, and connectivity of the wetlands associated with each breeding colony will influence how these changes in conditions will affect wood stork resiliency. In addition, wood stork ecology has evolved to respond to short- and long-term habitat change, and nesting colony turnover is a common trait for wading birds including wood storks, which means that individuals will shift among colony sites with changing environmental conditions to optimize breeding and foraging opportunities. In general, projected changes in precipitation and drying will vary among breeding regions, and even among colonies in a single breeding region, and could result in either positive or negative effects on wood stork breeding success from year to year.

We have limited our predictions of future wood stork resiliency related to climate to those associated with sea level rise, because the long-term

negative effects from sea level rise to suitable wood stork habitat and the wood stork's response to these effects can be projected with reasonable certainty. See *Future Conditions Methodology* below for further discussion.

Sea level rise—Warming temperatures, coupled with other factors such as the melting of continental ice, will cause sea levels to rise (Vermeer and Rahmstorf 2009, entire; Sweet et al. 2022, entire). Because wood storks mainly forage in water less than 20 in (50 cm) deep, projected sea level rise would make portions of the currently occupied coastal habitat unusable. As such, sea level rise and the associated flooding of coastal wetlands may result in upslope successional change of wetland habitats from freshwater, to brackish, to estuarine wetlands, which may lead to some loss and degradation of both foraging and coastal nesting habitats (Service 2024, chapter 6.2). Sea level rise is also likely to increase the impacts of storm surge potential along major coastlines (Collins et al. 2017, p. 611).

While sea level rise is expected to cause the degradation and loss of existing coastal wetland habitats in some areas, marsh migration models also project that new salt marsh habitat will be created as coastal marshes migrate upslope along the coastal upland and water interface (Kirwan et al. 2016a, p. 253), resulting in a net expansion of salt marsh habitat in response to sea level rise in some areas (Kirwan et al. 2016b, p. 4366). In some areas, coastal marsh habitat may remain stable or transgress upslope, and freshwater marshes may be converted into brackish or salt marsh depending upon whether the rate of horizontal erosion of the salt marsh from the ocean side (trailing edge) due to rising water is compensated or exceeded by the rate at which material accumulates vertically (e.g., trapping of sediment carried by flood tides, accumulation of root material in marsh soils), which causes its landward expansion upslope (Colombano et al. 2021, p. 1639). As such, in some areas, wetland habitat will shift and elevate rather than be lost, as sea level rise causes wetland migration landward, with seaward erosion and upslope transgression shifting the location and extent of each coastal wetland habitat type (Colombano et al. 2021, p. 1639). Therefore, although we can project through modeling where wood stork habitat within the core foraging area (CFA) are likely to be inundated by sea level rise, it is less clear where and how much brackish and saltmarsh habitat

suitable for wood stork use will be created in the future as coastal estuarine marshes migrate upslope in response to sea level rise (Fagherazzi, et al. 2020, entire). Regardless, a salt marsh ecosystem will continue to exist along the coastline, and the negative impacts to wood stork resiliency caused by habitat loss or degradation due to wetland habitat inundation by sea level rise is likely to be mitigated at least in part by newly created salt marsh and landward salt marsh migration (Kirwan et al. 2016a, pp. 258–259; Kirwan et al. 2016b, p. 4366). Other mitigating factors include wood storks' use of all coastal marshes (fresh or estuarine), available suitable habitat outside the current footprint of the CFA, and the ecological trait of moving to other or new nesting locations when a colony site is no longer suitable. In summary, sea level rise will result in the loss of some currently occupied wood stork habitat, even as new habitat is created.

Wetland habitat throughout the Southeast U.S. DPS of the wood stork's breeding range is widely available and is not considered to be a limiting factor. The Southeastern United States has nearly 48 million acres of wetlands, which account for more than 43 percent of the Nation's palustrine and estuarine wetlands (Sucik and Marks 2015, p. 11). The CFA that supports currently active wood stork nesting colonies includes over 10.8 million acres of suitable wetland habitat, and an additional 15.4 million acres of suitable wood stork habitat is available outside of the current CFA associated with active nest colonies but within the range of the wood stork (Service 2024, table 31). Wetland habitat loss or degradation due to draining or changing the hydrology was the main historical driver of wood stork population decline, primarily in south Florida, which supported nearly the entire breeding population. Human activity during the decades prior to listing of the species in 1984 had reduced wetland areas in this region by 35 percent, and construction of canals and ditches changed the hydrology of ecosystems like the Everglades, Lake Okeechobee, Kissimmee River, and Big Cypress Swamp. However, since that time, Everglades restoration efforts have been underway, and the species now has additional breeding strongholds in north Florida, Georgia, South Carolina, and North Carolina, where it exploits new habitat types such as coastal saltmarsh in combination with extensive adjacent freshwater, and even human-influenced and managed wetlands. Suitable breeding and foraging habitat is widely available

across the species' current range. Further, individual regional peak annual nest numbers are often significantly higher than the corresponding 5-year averages, indicating that each region can support a larger nesting population than evident by the average alone. In summary, though conditions that lead to the degradation and conversion of wetland habitat used by wood storks for nesting and foraging may increase, habitat availability does not currently appear to be limiting wood stork resiliency.

Conservation Efforts and Regulatory Mechanisms

Wetland conservation efforts, both voluntary and regulatory, are a key element in the recovery of the wood stork. The long-term survival and recovery of the wood stork requires the presence of a mosaic of wetland habitats for breeding, foraging, and roosting scattered throughout its range during varying climatic and seasonal conditions. Current and ongoing management actions that address stressors to foraging and breeding

habitats include maintenance, management and protection of existing wetlands, enhancement and creation of new wetland habitats, and restoration of previously impacted habitats. Details of conservation efforts can be found in the SSA report (Service 2024, chapter 5.3), but are summarized with updated information below:

- Lands with natural and manmade wetlands that contribute to wood stork recovery have and continue to be targeted for acquisition and easements for conservation through Federal, State, and private acquisition and private lands programs (figure 2). For example, the Everglades Headwaters National Wildlife Refuge and Conservation Area initiated in 2012 includes 2.6 million acres of grassland savannah with wet and dry prairie that encompasses the Kissimmee River Valley in Florida. Conservation easements and acquisition purchases for the 150,000-acre approved acquisition boundary are underway, and will provide additional conservation benefits to wood storks. Florida's Wildlife Corridor also facilitates

partnerships that result in conservation land acquisitions (Florida Wildlife Corridor 2022 and Florida's State Wildlife Action Plan (FSWAP) 2019, entire). Land acquisition for conservation most often includes property with wetlands, and of the 10 million acres (31 percent) in Florida managed as conservation land, 2.6 million acres have been purchased through land acquisition programs such as the Florida Forever and P2000 programs. Georgia, South Carolina, North Carolina, Alabama, and Mississippi also have their own unique initiatives to preserve wildlife and natural resources including wetlands and are described within their State Wildlife Action Plans (Georgia's State Wildlife Action Plan (GSWAP) 2015, South Carolina State Wildlife Action Plan (SCSWAP) 2015, North Carolina Wildlife Resources Commission (NCWRC) 2015, Arkansas Wildlife Action Plan (ASWAP) 2015, and Mississippi State Wildlife Action Plan (MSWAP) 2015, entire).

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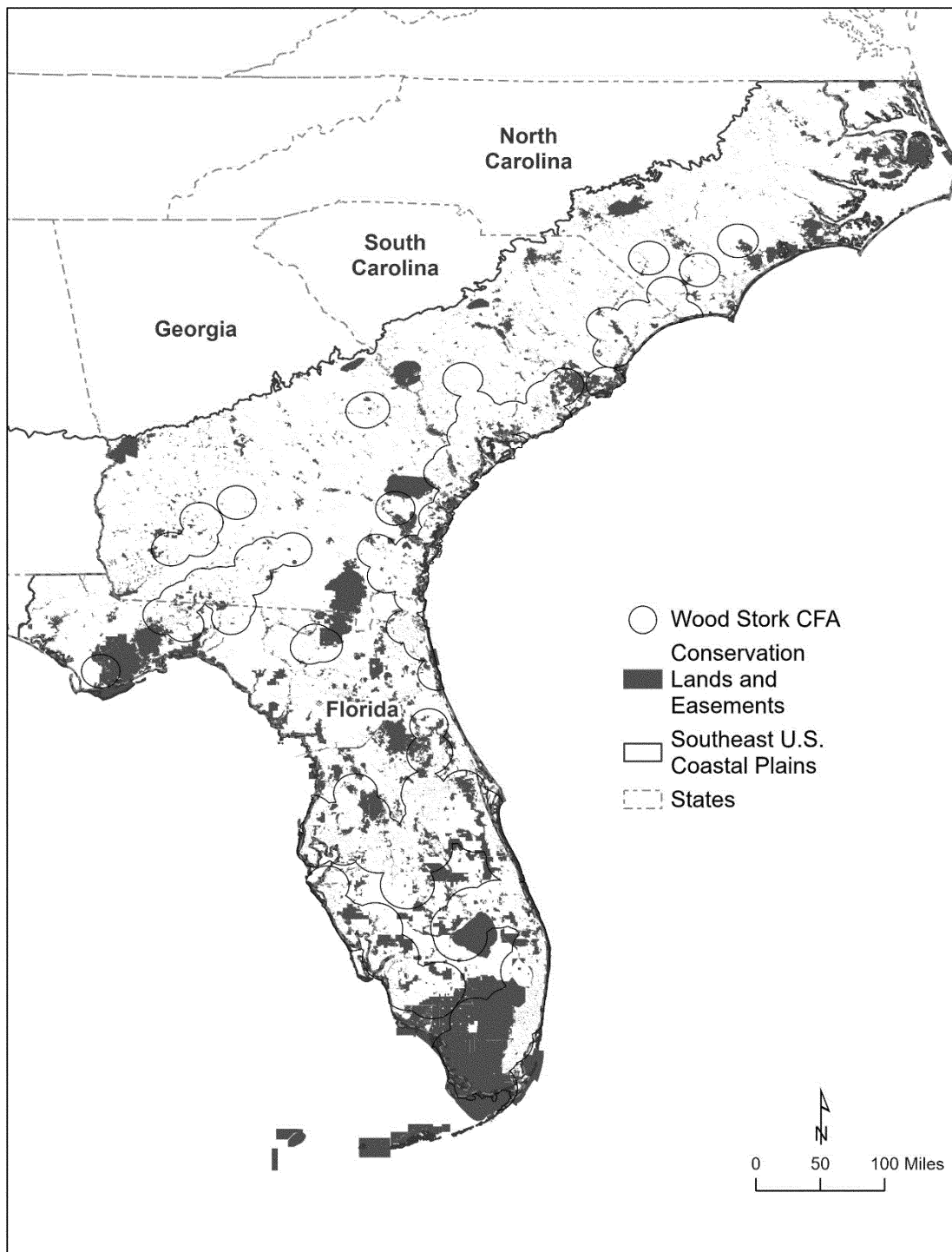
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Figure 2. Conservation lands and easements within the breeding range of the wood stork, which includes the current core foraging area (CFA), occupy 17.4 million acres including 9.2 million acres of wetlands.

- Large-scale watershed and wetland ecosystem restoration and protection initiatives with regionwide impacts have helped and continue to help restore wetland ecosystems throughout

the Southeastern United States, including the Everglades via the Comprehensive Everglades Restoration Plan (CERP). Under the CERP, the 6,500-acre Everglades Agricultural Area Reservoir was created to store and clean water from Lake Okeechobee. The water will go south to restore natural freshwater flow through the Florida Everglades, Picayune Strand (50 percent hydraulic restoration achieved through road removal, plugging canals, and

pump stations), Southern Corkscrew Watershed (4,000 acres of willow-infested wetlands treated thus far), Kissimmee River (restoration has been completed with more than 40 miles of river floodplain ecosystem and 20,000 acres of wetlands restored), Upper St. Johns River Basin (166,000 acres of the headwaters already restored), Everglades Headwaters (lands and conservation easements being actively acquired), Tampa Bay Estuary, Lake

Apopka (15,000 acres of wetlands restored on former farms), Altamaha River Watershed, Lower Savannah River Watershed, and Ashepoo-Combahee-Edisto Basin (over 160,000 acres of upland and wetland habitat protected). Since the initiation of the CERP in 2000, wood stork demographic measures have continued to improve under its water management guidance.

One goal of the CERP is to restore a robust and successful breeding population of wood storks within the greater Everglades, including the Big Cypress and Corkscrew Swamp, and the CERP's target of supporting 1,500–2,500 nesting pairs of wood storks in the mainland Everglades (water conservation areas and Everglades National Park) is frequently achieved (Cook and Barnanski 2023, p. 27). This reflects the favorable hydrologic conditions of those years and the continued improvement of water management practices in supporting nesting wading birds like the wood stork and the overall health of the Everglades ecosystem. CERP conservation initiatives are independent of the wood stork's status under the Act, and, therefore, will continue as conservation goals after delisting.

- On March 11, 2024, the Department of the Interior and the Service announced the newest large-scale initiative, the Everglades to Gulf Conservation Area (EGCA), which will help to facilitate conservation within 4,045,268 acres of Southwest Florida using tools like voluntary conservation easements. "Conservation Areas" consist primarily or entirely of conservation easements on private lands in cooperation with landowners. The EGCA is expansive and spans 12 southwest and central Florida counties west of Lake Okeechobee from Lakeland south to Naples. It borders the Everglades Headwaters National Wildlife Refuge Conservation Area and Florida Panther National Wildlife Refuge and primarily includes rural ranches, farms, and other large plots of land that are primarily privately owned by constituents willing to protect the wildlife in and around their properties. This Conservation Area will enhance and support the conservation objectives of the Everglades Restoration program, including wetland protection, enhancement, and restoration.

- State Wildlife Action Plans (SWAPs) receive Federal funding through the State and Tribal Wildlife Grants program and include plans for the recovery of threatened and endangered species and the habitat upon which they depend. A primary theme in each SWAP throughout the

wood stork's range is wetland conservation (ASWAP 2015, FSWAP 2019, GSWAP 2015, MSWAP 2015, NCWRC 2015, and SCSWAP 2015, entire). Colony sites have been and continue to be managed, enhanced, restored, and created, resulting in improved wood stork nesting conditions, recolonization, and establishment of new colony sites (*e.g.*, Woody Pond colony in Georgia; Dugannon Plantation and Green Pond colonies in South Carolina; Duck Lake, Orlando Wetlands, Seven Wetlands, and Wakadohatchee Wetlands colonies in Florida), many of which are included in SWAPs.

- Wetland conservation strategies are also developed for each State through Wetland Program Plans (EPA 2025, unpaginated). These plans summarize the status of wetlands in each State and include information on how wetlands are regulated and efforts developed to restore and/or mitigate wetland loss.

- In addition to being regulated through the Clean Water Act (CWA) and section 404 permitting through the U.S. Army Corps of Engineers, Florida also has independent authority over wetlands under its Florida Water Resources Act (chapter 373 Florida Statutes (F.S.)) and through its State-owned submerged lands program (Chapter 18–21 Florida Administrative Code (F.A.C.)): Sovereignty Submerged Lands Management; 253.03(7) F.S.) which is analogous to the CWA's section 404 program. Florida's jurisdiction encompasses a broader definition of wetlands than that of the CWA by recognizing and regulating a larger variety of wetlands than does the CWA section 404 program. For example, Florida jurisdictional wetlands include any lands that are "inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support . . . a prevalence of vegetation typically adapted for life in saturated soils" (chapter 62–340.200(19) F.A.C.). For such wetlands, Florida regulates dredging and filling, as well as the construction, alteration, operation, maintenance, repair, abandonment, and removal of storm water management systems, dams, impoundments, reservoirs, and their associated structures. The wood stork is also listed by the State of Florida as a State threatened species (chapter 68A–27 F.A.C.). This status provides conservation measures and permitting guidance related to protecting and minimizing impacts to State-listed species and their habitat, such as some wading bird species and the hydrology and vegetation of their foraging and nesting wetland habitat. Moreover, the

Florida Imperiled Wading Bird Action Plan (Florida Fish and Wildlife Conservation Commission 2013, entire) includes conservation actions for high-priority nesting colonies that are subject to disturbance, establishes management recommendations to protect and manage nesting colonies, and prioritizes the top nesting colonies and associated foraging habitat based on each species' needs for protection and management.

- Smaller scale, more localized wetland restoration projects on individual public, private, industrial, and agriculture properties within the range of the wood stork have and continue to improve wood stork habitat, through various programs and regulations including: National Coastal Wetlands Program, Wetland Reserves Program (restored over 325,000 acres across several States, with one site now supporting a nesting colony), Partners for Wildlife, Forest Stewardship Program, North American Waterfowl Management Plan, and North American Wetlands Conservation Act (77 projects across several States affecting 250,000 acres of wetlands), and the Food Security Act. On private agricultural lands, wetlands are protected through the Food Security Act by removal of incentives for farmers to convert wetlands to crop fields.

- Colonies and 9.2 million acres of wetlands occurring on State and Federal lands (*e.g.*, the Service's National Wildlife Refuges, National Park Service lands, National Forests, Department of Defense lands, National Aeronautics and Space Administration lands, State Parks, State Wildlife Management Areas, and State Forests) within the breeding range are and will continue to be afforded some protection from development and other large-scale habitat disturbance through State and Federal regulations. These regulations include the Coastal Zone Management Act, Rivers and Harbors Act, NEPA, National Forest Management Act, the National Wildlife Refuge System Improvement Act, the Sikes Act, and others. Mitigation and wetland restoration may also be regulated through the National Wetlands Mitigation Action Plan, and the Executive Order (E.O.) 11990 Protection of Wetlands.

- Suitable foraging wetlands have been and continue to be created within diked "impoundments," through modifications of existing impoundments, restoration of impacted wetlands, creation of impoundments, and water storage areas, often creating seasonal shallow wetlands through hydrologic management (Service 2024, chapter 5.3).

- Tidal impoundments (*e.g.*, former rice fields) in South Carolina (40,000 acres with dike and water management infrastructure for management, and 190,000 acres reverted tidal marsh bottom lands, hardwoods, and forests) and Georgia are now managed to provide winter habitat for waterfowl and foraging for wood storks year-round. By staggering drawdowns in managed impoundments and by tides in former impoundments, concentrated prey is being made available to wood storks throughout the breeding and post-breeding seasons (Service 2024, chapter 5.3).

- Wastewater treatment flow through marshes and other manmade wetland features are increasing within the Southeastern United States and are used by wood storks as both foraging and breeding habitats. For example, in Florida, management for wastewater treatment now supports 200 acres of wetlands at Viera Wetlands and 125 acres of wetlands at Sweetwater Wetlands Park; and wastewater treatment wetlands now support a wood stork nesting colony each at Wakodahatchee Wetlands (50 acres of wetlands), Orlando Wetlands (1,200 acres of wetlands), and at Se7en Wetlands (1,600 acres of wetlands). Each of these managed wetland systems have been documented to support a large variety of wetland-dependent species including wood storks (with nesting now occurring at three sites). As noted above, the 6,500-acre Everglades Agricultural Area Reservoir will store and clean water from Lake Okeechobee, will provide wood stork foraging habitat along the reservoir's edges and in shallow areas during periods of drawdown, and will improve conditions of wetlands with appropriately timed water releases in the Everglades (Service 2024, chapter 5.3).

- Wetlands negatively impacted by encroaching woody plants (*e.g.*, willows) have been and continue to be restored by combining herbicide and mechanical methods; these projects have opened up impacted wetlands and

made them available for wood stork use as colonies and foraging sites (Service 2024, chapter 5.3). Wetland restoration initiatives to restore thousands of acres of wetlands afflicted by woody and willow encroachment during the past 15 years have been implemented at: Blue Cypress Marsh, Blue Spring State Park, Corkscrew Regional Ecosystem Watershed, Emerald Marsh, Fort Drum Marsh, Jonathan Dickinson State Park, Lake Apopka North Shore, Moccasin Island Marsh, Ocklawaha Prairie, Paynes Prairie, River Lakes, St. Johns Marsh, Sunnyhill, Sweetwater, Three Forks Marsh, Upper Ocklawaha River Basin, Upper St. Johns River Basin, Water Conservation Area 3A, Frances Taylor Wildlife Management Area, and Everglades National Park.

- Wood stork colonies are protected through the Migratory Bird Treaty Act, which aims to ensure the sustainability of populations through prohibition of take including killing, capturing, selling, trading, and transport of protected migratory bird species without prior authorization by the Service.

- Partnerships developed through conservation easements, wetland restoration projects, and other conservation means, occurring throughout the southeast U.S. coastal plains, have and will continue to minimize potential loss of colony sites.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and

replaces a standalone cumulative-effects analysis.

Current Condition

The U.S. breeding population of wood storks has been categorized as a single population by genetic analyses to date, which have been corroborated by documented intra-regional movements of breeding-aged individuals and shifts in nesting throughout the range (Stangel et al. 1990, p. 618; Van Den Bussche et al. 1999, p. 1083; Zimmerman 2023, entire). As 'partial migrants,' some individuals remain relatively permanent residents to an area or region, while others are seasonal migrants, and still others move between regions based upon environmental and habitat conditions (*i.e.*, "facultative migration") (Picardi et al. 2020, p. 1). Within the breeding range, wood stork colonies cluster into the South, Central, Northwest, and Northeast breeding regions (figure 1), which do not function as discrete populations but rather as geographical concentrations of breeding activity. These clusters vary by climate, geography, and landscape features such as wetlands, as well as their influences on wood stork ecology, habitat, and behavior.

Current Resiliency

Demographic factors such as abundance, adult survival, reproductive success, juvenile recruitment, and population growth influence wood stork resiliency. To assess the current condition of the wood stork, we focused on those factors that contribute to resiliency, including nesting population size (number of pairs/nests), population growth trend, number of large, persistent nesting colonies (colonies that consistently support more than 200 pairs) and productivity (fledged chicks per nest), which are all described in greater detail in the SSA report (Service 2024, chapter 4). We categorically assigned a condition of high, moderate, or low to each of these factors for each breeding region and for the DPS as a whole (table 4).

TABLE 4—WOOD STORK POPULATION CONDITION CATEGORIES BASED ON POPULATION METRICS

Population metric	Low condition	Moderate condition	High condition
Population size (nests/pair)	<1,500	1,500–2,499	>2,500.
Large persistent colonies	0–1	2–4	5 or more.
Productivity	<1.3	1.3–1.7	>1.7.
Population trend	Declining	Stable	Increasing.

As described above under *Recovery Criteria*, the productivity targets we used to categorize condition were likely

overly conservative, as our estimates of the productivity rates adequate to maintain stable or growing populations

of wood stork were overestimated. As evidence, the productivity rate of less than one has led to population growth

adequate to recover similar species such as the bald eagle and brown pelican (which are both long-lived fish-eating bird species like the wood stork, and fully recovered with productivity rates

below wood stork productivity rates) (74 FR 59444, November 17, 2009; 72 FR 37346, July 9, 2007; Service 1989, p. 7). We assessed the current overall resiliency of each breeding region based

on the average condition of each category of the demographic factors, resulting in the overall current condition of each breeding region ranging from high to moderate (table 5).

TABLE 5—CURRENT CONDITION OF EACH WOOD STORK BREEDING REGION

Breeding region	Population size	Population trend	Large persistent colonies	Productivity	Overall demographic condition
Northeast	High	High	High	High	High.
Northwest	Low	Moderate	Low	High	Moderate.
Central	Moderate	Low	Very Low	Moderate	Moderate-Low.
South	High	Moderate	High	Low	High-Moderate.
Southeast U.S. DPS	High-Moderate	Moderate	Moderate	High-Moderate	High-Moderate.

Because suitable wetland habitat throughout the wood stork’s breeding range is widely available, and habitat does not appear to be limiting wood stork resiliency, we did not include a measure for habitat resiliency factors in the analysis of current condition. The Southeastern United States has nearly 48 million acres of wetlands, which account for more than 43 percent of the Nation’s palustrine and estuarine

wetlands (Sucik and Marks 2015, p. 11). Currently, 10.8 million acres of suitable wood stork wetland habitat within the CFA (Service 2024, table 31) supports an annual breeding population of 10,000 to 14,000 pairs (Service 2024, figure 18). There are an additional 15.4 million acres of suitable wetland habitat within the breeding range but outside the current footprint of the CFA (Service 2024, table 31). Further, the peak annual

counts of nesting pairs during the past 15 years indicate that wood stork habitat within the CFA could, during years with favorable conditions, support a significantly greater number of nesting pairs than is evident from the 5-year averages (table 6), which is another indicator that habitat is not limiting to the wood stork population.

TABLE 6—5-YEAR AVERAGE AND MAXIMUM NESTING PAIR COUNTS 2008–2022 BY BREEDING REGION

Breeding region	5-Year average	Maximum count
Northeast	4,187	4,700
Northwest	1,510	2,100
Central	2,690	4,800
South	2,106	6,300
Southeast U.S.	(10,493)	(17,900)

Current Redundancy and Representation

As previously described, the Southeast U.S. DPS of the wood stork is a wide-ranging, single population, with all breeding occurring in Florida, Georgia, South Carolina, and North Carolina. However, to assess redundancy in our analysis of current and future condition, we identified four breeding regions (figure 1) as defined by the clustering of nesting colonies and nesting numbers (within and across the geographic borders) among the four States, even though there is no biological or ecological distinction among individuals in these four areas. Wood stork nest numbers often fluctuate among breeding regions within and between years, due to environmental conditions (e.g., rainfall amounts and timing). When conditions at a colony site become less favorable for nesting, wood storks tend to establish new colony sites or move to other established colony sites that offer more favorable conditions at that time. In contrast to historical trends, 40–50

percent of wood stork nesting now occurs in the Northeast Breeding Region. The wide spatial extent covered by the Southeast U.S. DPS of the wood stork across the four breeding regions reduces the risk to the wood stork, because it is unlikely that a single catastrophic event would impact all four breeding regions. Furthermore, the impacts of stressors in one region may be mitigated by the fluid nature of breeding throughout the range. In addition, having several large, persistent colonies as anchors within each breeding region provides resiliency within a region and represents a form of redundancy for the Southeast U.S. DPS of the wood stork.

Maintaining representation in the form of genetic or ecological diversity is important to sustain the capacity to adapt to future environmental changes. As previously discussed, there is little genetic diversity among the Southeast U.S. DPS of the wood stork. However, ecological diversity within the range of the species is extensive. Wood storks use a mosaic of wetland habitats for nesting, roosting, and foraging. These

include shallow and persistent (*i.e.*, short and long hydroperiod) wetlands, marshes, and shallow open water habitats (including freshwater, brackish water, and saltwater habitat associated with natural and anthropogenic landforms). Negative impacts to the wetlands of the Everglades and other wetlands in south Florida from development and agriculture (during the early and mid-1900s) was a major contributor to the population decline that led to the listing of the U.S. breeding population of the wood stork, but these anthropogenic environmental changes to south Florida also may have influenced the regional shift in abundance of nesting storks northward (1980s to present).

Although wood storks have always had the ability to nest in other parts of their range, they historically concentrated in south Florida because the reproductive rewards there were higher for less cost, resulting in greater reproductive success. However, as conditions deteriorated and dried in south Florida, the extensive salt marshes, coastal brackish and

freshwater wetlands, and old rice impoundments in Georgia and South Carolina offered greater stability, and an option for foraging to support reproduction during the breeding season; the result was that the wood stork population center shifted north. A second shift in wood stork nesting occurred in southwest Florida and is likely related to degradation of the hydrology of the Corkscrew Swamp watershed due to adjacent agricultural practices and intensive adjacent development (Clem and Duever 2019, p. 370). These anthropogenic changes appear to have led to a local shift in abundance of nesting away from Corkscrew Swamp and simultaneous colonization of new nesting sites nearby and north into the Caloosahatchee River, Peace River, Myaka River, and Sarasota Bay basins.

The wood stork now consistently breeds in four distinctive regions of the coastal plains within its range: Southern Florida Coastal Plain (South Breeding Region), Southern Coastal Plain (Central and Northeast Breeding Regions), Middle Atlantic Coastal Plain (Northeast Breeding Region), and Southeastern Coastal Plain (Northwest Breeding Region). Hereinafter we will refer to these four regions collectively as the southeast U.S. coastal plains. Further, current wood stork nesting in North Carolina appears to indicate range expansion that is likely a response related to changes in climate, as has been documented in multiple other bird species worldwide (Hitch and Leberg 2007, p. 534). Thus, the wood stork's colony turnover trait, its shift of breeding colonies in response to habitat conditions, and the expansion northward of its historical range, may demonstrate an innate behavioral and adaptive response to deteriorating or long-term changes in habitat conditions and climate, which ultimately indicates a certain degree of adaptive capacity and adequate representation in wood storks.

Some wood storks are "residents" (remain in one area all year), some exhibit seasonal migratory movements among breeding regions and other areas in Alabama and Mississippi, and others employ both strategies depending upon habitat conditions (*i.e.*, facultative migration; Picardi et al. 2020, p. 9). In response to cooler temperature conditions in the fall and winter, many wood storks migrate south into Florida, especially towards South Florida, or to coastal habitats if residing in South Carolina, Georgia, or north Florida (Coulter et al. 2020, unpaginated). These patterns also indicate plasticity that allows individuals to respond to current

environmental conditions and to move (or not) depending on local resource availability.

Wood storks also use anthropogenic wetlands such as canals, ditches, impounded ponds and lakes, and other urban and suburban habitats rangewide, which they were not known to use historically. Wood storks were once thought to be intolerant of human disturbance (Burleigh 1958, p. 119). However, with the increase in use of urban and suburban wetland habitats, wood storks appear more tolerant of human activity, to the extent that they will forage and nest in human-populated areas like stormwater management lakes and ponds within housing developments, commercial shopping areas, and adjacent to busy roads (Evans and Gawlik 2020, p. 1; Tsai et al. 2016, p. 644). Thus, wood storks will use suitable foraging wetlands and nesting habitats found in a variety of natural and human-influenced and human-created habitats.

As mentioned previously, representation is the ability of a species to adapt to both near-term and long-term changes in its physical and biological environment. Species adapt to novel changes in their environment by either: (1) moving to new, suitable environments or (2) altering their physical or behavioral traits (phenotypes) to match the new environmental conditions through either plasticity or genetic change (Beever et al. 2016, p. 132; Nicotra et al. 2015, p. 1270). Thus, representation reflects the ability of the species to respond and adapt to changing conditions (adaptive capacity), either by changing themselves, or by responding to changes around them. Representation is often measured in the genetic, morphological, ecological, behavioral, or other types of diversity present among populations, but, as noted previously, there is little evidence of these types of differences among populations of wood stork. However, the wood stork's innate behavioral capacity to respond to changing and deteriorating wetland conditions on a daily, seasonal, annual, and long-term basis, and to exploit novel habitat types such as human-influenced and -created wetlands, indicates adaptive capacity. Wood storks in the Southeast U.S. DPS have gradually shifted and expanded their breeding range (*e.g.*, northward into three new States) and increased their habitat use (*e.g.*, to include urban and suburban wetlands, managed wetlands, impounded wetlands, restored wetlands, and also exploit the coastal salt marshes in combination with the adjacent freshwater wetlands of

Georgia and South Carolina) in response to changing conditions. Ultimately, these responses demonstrate a degree of adaptive capacity despite a lack of evidence showing genetic diversity within the wood stork.

Future Condition Methodology

To analyze the wood stork's viability, we used population demographics to measure the current condition of each breeding region, and we used habitat condition as a proxy for population resiliency in order to project the future condition of each breeding region based on the primary threats to wood stork into the future.

As mentioned previously, climatic variables such as periodicity and amounts of rainfall, drought, and hurricane frequency and intensity will vary annually in the future and impacts to individual colony sites and foraging habitats for wood storks will be dependent on an extensive range of local conditions. Thus, impacts of these climatic variables to habitat are less predictable, as is the species' response to these impacts. In general, temperature and precipitation increases are projected in each of the wood stork breeding regions. An increase in evaporative deficit can lead to drought conditions that would impact wetland habitats and foraging resources. Overall, this change will affect the long-term trend in wood stork resiliency. Projected drought and stronger hurricanes will directly impact wetlands and individual colony sites across the wood stork's range. This change could affect nesting both negatively and positively and will contribute to variability in annual nesting success. If available in the future, downscaled climate models for each of the breeding regions could be helpful in predicting localized impacts and developing future management options to support wood stork breeding ecology in each region. However, at this time we do not have information that would allow us to reliably predict these impacts and their effects on the wood stork.

To project the future condition of each breeding region, we considered potential future impacts to the current footprint of the CFA habitat that support nesting colonies, and developed three future scenarios based on projections for development/urbanization, sea level rise, and the continuation or discontinuation of ongoing beneficial conservation actions. We assessed habitat condition based on the percentage of acres remaining after projected urbanization impacts on the CFA; percentage of the wetlands, nesting colonies, and large persistent

colonies remaining within the CFA after sea level rise; and varying degrees of conservation implementation.

We considered a 30- and 60-year timeframe into the future (2050 and 2080) for the future analysis. These time elements are within the predictive range of the model used to project future development, and within the recently updated climate change forecasts (Sweet et al. 2022, entire) that cover the Southeastern United States. Biologically, the 30- and 60-year timeframes cover 7 and 15 wood stork generations, respectively, assuming a generation time of 4 years (Coulter et al. 2020, unpaginated). These multi-generational timeframes allow for adequate time to detect a downward population trend, and to subsequently formulate responses with appropriate conservation actions.

Potential future impacts associated with changing climatic conditions (*i.e.*, estimates for precipitation, drought, temperature, and sea level rise) were

based on climate model projections downscaled for Florida, Georgia, and South Carolina. However, as discussed above under *Threats*, climate metrics such as precipitation, temperature, and drying will likely be variable on regional and local scales and could result in positive or negative impacts on the wood stork's breeding success. As such, we cannot reliably project effects to wood storks from these climate metrics. Therefore, we have focused our future climatic impact scenarios on varying degrees of sea level rise because modeling of sea level rise impacts to suitable habitat is available throughout the range of the wood stork, and the effects on habitat are reasonably predictable, although we acknowledge potential effects to wood storks due to other climatic variables as well. To model sea level rise, we used the National Oceanic and Atmospheric Administration (NOAA) sea level rise projections (Sweet et al. 2022, entire).

To forecast future urbanization/development, we considered future scenarios that incorporate the SLEUTH (Slope, Land use, Excluded area, Urban area, Transportation, Hillside area) model, which simulates patterns of urban expansion that are consistent with spatial observations of past urban growth and transportation networks (Terando et al. 2014, entire).

The future scenarios we assessed include varying timeframes and magnitude of stressors that relate primarily to climate change and land conversion, but also to ongoing conservation actions that help to mitigate stressors. All are based on the best scientific and commercial information available at this time. Details on future scenarios can be found in the SSA report (Service 2024, chapter 6.1). We considered three plausible future scenarios, with variations in the future influence of the primary threats, over a 30-year (to 2050) and 60-year (to 2080) projection (table 7).

TABLE 7—THREE POTENTIAL FUTURE SCENARIOS FOR THE SOUTHEAST U.S. DPS OF THE WOOD STORK BASED ON CLIMATE CHANGE, LAND USE, AND CONSERVATION EFFORTS

Climate change	Land use change/ development	Conservation actions
Scenario 1—Intermediate sea level rise; no change in conservation		
Sea-level rise: NOAA “intermediate” projection.	SLEUTH 2050 & 2080 Nesting colony core foraging area habitat impacted by development (70 percent probability or greater) by 2050 and 2080.	Wetland habitat protections, conservation, management, acquisitions, and restoration efforts at least at current levels.
Scenario 2—High sea level rise; no change in conservation		
Sea-level rise: NOAA “high” projection.	SLEUTH 2050 & 2080 Nesting colony core foraging area habitat impacted by development (70 percent probability or greater) by 2050 and 2080.	Wetland habitat protections, conservation, management, acquisitions, and restoration efforts at least at current levels.
Scenario 3—High sea level rise; reduced conservation		
Sea-level rise: NOAA “high” projection.	SLEUTH 2050 & 2080 Nesting colony core foraging area habitat impacted by development (70 percent probability or greater) by 2050 and 2080.	Wetland habitat regulatory protections, conservation management, and acquisitions decreased due to changes in regulatory mechanisms and lower funding levels Restoration: No longer targeting benefits for wood storks.

The projections of future CFA habitat condition described above are based upon habitat within the current footprint of the CFA, and how the major threats may reduce or degrade that habitat. However, the analysis of future threats to habitat within the current CFA does not account for the response of wood storks to changing habitat conditions, such as relocation of nesting colonies into other suitable occupied habitat acres outside the current footprint of the CFA. The expansion of wood stork breeding regions and the overall breeding range, and the

establishment of new colonies in response to wood stork population growth and changing habitat, is a phenomenon that has been underway since the 1980s. Historical evidence from wood stork response to the ditching and draining of wetlands in the Everglades and south Florida indicates that some storks will continue to nest in areas with declining habitat conditions, and other wood storks will move and seek more favorable habitat conditions and either locate other active colony sites or pioneer new colony sites. Based on recent and current trends, we expect

that the Southeast U.S. DPS of the wood stork will continue to grow, shift, and respond to changing environmental and habitat conditions, and to anthropogenic degradation, conversion, restoration, or creation of wetland habitats on small and large scales as they have in recent history.

In addition, our analysis of threats to habitat within the current footprint of the CFA does not account for the availability of suitable habitat that is currently occupied by wood storks but outside the current footprint of the CFA. We know that suitable habitat that is

occupied by wood storks but outside the current footprint of the CFA is extensive (Service 2024, table 31), and that marsh migration models actually predict upslope migration and a net increase in salt marsh habitat in some areas in response to rising sea levels (Kirwan et al. 2016b, p. 4366). As such, projections of wood stork resiliency based solely upon impacts to habitat within the current CFA underestimate wood stork future condition.

Therefore, for this final rule we also considered ecological and demographic characteristics that influence how the wood stork will respond to the modeled changes in habitat. For example, we incorporate into our analysis the behavioral trait of partial migration, the ecological record of the species' response to short- and long-term changes to habitat condition, wood stork population projections based upon current trends, breeding region peak counts, and the availability of suitable wood stork wetland habitat projected to occur in the future given updated sea level rise projections in 2050 and 2080 (Sweet et al. 2022; Service 2024, chapter 6.2). More detail on how we assessed each of these metrics can be found in the SSA report (Service 2024, chapter 6).

This updated analysis replicates the habitat-based approach we used to project the future condition of the current CFAs in each breeding region by employing the condition of required wood stork habitat as a proxy for the condition of the wood stork breeding region, or its resiliency. CFAs are suitable foraging wetlands within a set distance from each colony site that is based on the documented regional daily distance that wood storks travel from their colony sites during the breeding season: 30 kilometers (km) (19 miles (mi)) in south Florida, 25 km (16 mi) in central Florida, and 20 km (12 mi) in all other regions/States (Borkhataria et al. 2013, pp. 8–9; Bryan et al. 2012, p. 293; Cox et al. 1994, p. 134).

Future Condition

As previously described, we measured the current condition of each breeding region by demographic metrics (population size, population trend, the number of large persistent colonies, and productivity). We then used the current condition as a proxy for the baseline habitat condition for the future condition analysis; the underlying assumption is that habitat condition reflects demographic conditions and vice versa. We considered the future under 30- and 60-year timeframes (to 2050, and to 2080). A more detailed account of how we assessed the

projected effects of each of the primary influence factors on habitat in the future to determine the future condition of each breeding region can be found in the SSA report (Service 2024, chapter 6). We have also updated sea level rise projections (Sweet et al. 2022, entire) and added a future projection of available suitable foraging habitat (both inside and outside the CFA) given sea level rise, and future population projections based on current population trends and recent peak nesting counts within each breeding region (Service 2024, chapter 6).

All future scenarios we considered in each breeding region project some impact to breeding season colony CFA wetlands and colonies from sea level rise, and a reduction in acres within the current footprint of the CFA. However, the analysis does not account for suitable habitat created by the same sea level rise conditions that result in the loss of some of the suitable habitat in the CFA (i.e., marsh migration; Kirwan et al. 2016a, p. 253). Further, these scenarios do not account for how wood storks respond to the changing habitat conditions. For example, we expect that in some cases individuals displaced by lost habitat will pioneer new colony sites in occupied habitat outside the current CFA, either within the same or another breeding region; however, the quantification of acres within the current footprint of the CFA inundated due to sea level rise does not reflect these outcomes (see *Suitable Breeding Habitat, Population and Colony Turnover Trends*, and *Future Resiliency Considerations*, below). As such, future projections of wood stork resiliency which are based solely upon the amount of current CFA habitat inundated by sea level rise underestimate wood stork future condition, because the true future resiliency of the wood stork will depend just as much upon suitable occupied acres available to wood storks to use as CFA habitat and the faculty of the species to exploit those available acres.

South Breeding Region—Currently, there are 3,840,486 acres of wetland habitat within the South Breeding Region CFA that support 36 colonies, of which 5 are designated as large, persistent colonies.

Under Scenario 1, sea level rise is projected to impact 17 and 21 percent of the wetlands within the current footprint of the CFA by 2050 and 2080, respectively; and that area impacted by (and potentially lost to) sea level rise will include 12 (33 percent) of the 36 colony sites by 2050 and 2080. Two of the current five (40 percent) large, persistent colonies will be impacted by sea level rise in both the 2050 and 2080

timeframes. Land conversion will increase from 18 percent to 24 and 30 percent of the CFA under the 2050 and 2080 timeframe projections, respectively; however, as stated previously, habitat does not appear to be a limiting factor for wood stork resiliency. Conservation efforts, such as wetland conservation easements and regulatory mechanisms to avoid, minimize, and mitigate impacts to wetlands, remain at least at current levels under Scenario 1, making Scenario 1 similar to Scenario 2, and better than Scenario 3 in terms of conservation efforts and regulatory mechanisms.

Under Scenarios 2 and 3, sea level rise is projected to result in loss of 21 and 25 percent of wetlands within the current footprint of the CFA by 2050 and 2080, respectively. Of the current 36 active colony sites, 12 and 13 (33 and 36 percent) will be impacted by (and potentially lost to) sea level rise in both the 2050 and 2080 timeframe projections. Two of the current five large, persistent colonies (40 percent) will be impacted by sea level rise in either timeframe. Land conversion in the CFA will increase from 18 percent to 24 percent and 30 percent by 2050 and 2080, respectively. Conservation efforts are maintained under Scenario 2 and reduced under Scenario 3. However, in this breeding region the conservation efforts under Scenario 2 would not likely counteract the other negative influence factors considered (e.g., habitat loss within the current CFA due to sea level rise and development trends) and therefore are not likely to have a significant influence over the difference in overall future condition between Scenarios 2 and 3 in the South Breeding Region.

As such, the future condition of habitat in the South Breeding Region would be similar under Scenarios 2 and 3, and slightly better under Scenario 1. Overall, we expect resiliency in this breeding region to decline to some degree under all three future scenarios, but to be offset by positive metrics described below under *Suitable Breeding Habitat and Population and Colony Turnover Trends*.

Central Breeding Region—Currently, there are 2,302,543 acres of wetlands in the Central Breeding Region CFA that support 48 colonies, of which 3 are designated as large, persistent colonies.

Under Scenario 1, sea level rise is projected to impact 8 and 11 percent of the wetlands within the current boundary of the CFA by the 2050 and 2080 future timeframe projections, respectively; the area impacted by (and therefore potentially lost to) sea level

rise will include 14 of the 48 currently active colony sites in the 2050 projection (29 percent), and 15 of the 48 current colony sites in the 2080 projection (31 percent). One of the current three large, persistent colonies (33 percent) will be impacted by (and potentially lost to) sea level rise in both future timeframe projections. Land conversion will increase from 25 percent to 32 and 39 percent of the CFA under the 2050 and 2080 timeframe projections, respectively. Conservation efforts are maintained at least at current levels under Scenario 1, making the future condition in terms of conservation under Scenario 1 similar to that under Scenario 2 and better than that under Scenario 3.

Under Scenarios 2 and 3, sea level rise is projected to result in losses of 11 and 13 percent of wetlands within the current footprint of the CFA by 2050 and 2080, respectively. Of the 48 currently active colony sites, 15 (31 percent) and 16 (33 percent) are projected to be impacted by (and potentially lost to) sea level rise by 2050 and 2080, respectively. One of the current three large, persistent colonies will be impacted by (and potentially lost to) sea level rise in both future timeframe projections. Land conversion in the CFA will increase from 25 percent to 32 percent and 39 percent by 2050 and 2080, respectively. Conservation efforts are maintained under Scenario 2 and reduced under Scenario 3. In the Central Breeding Region, conservation efforts under Scenario 2 would partially mitigate negative influence factors, resulting in a slightly better future condition in terms of conservation and regulatory mechanisms under Scenario 2 when compared with Scenario 3.

Overall, we expect resiliency in this breeding region to decline to some degree under future Scenarios 1 and 2, and slightly more so under future Scenario 3. However, we expect some of that decline in resiliency to be offset by positive metrics described below under *Suitable Breeding Habitat* and *Population and Colony Turnover Trends*.

Northwest Breeding Region—Currently, there are 1,286,773 acres of wetlands within the Northwest Breeding Region CFA that support 30 colonies, of which one is designated a large, persistent colony.

Under Scenario 1, sea level rise is projected to impact 3 and 6 percent of the wetlands within the current footprint of the CFA by 2050 and 2080, respectively; the area impacted by sea level rise will not include any of the 30 currently active colony sites in either

future timeframe projection. The one currently active large, persistent colony in this region will not be impacted by sea level rise in either future timeframe projection. Land conversion will increase from 8 percent to 15 and 22 percent of the CFA under the 2050 and 2080 timeframe projections, respectively. Conservation efforts are at least at current levels under Scenario 1, making the future outlook in terms of conservation and regulatory mechanisms under Scenario 1 similar to that under Scenario 2, and better than that under Scenario 3.

Under Scenarios 2 and 3, sea level rise is projected to result in the loss of 3 and 7 percent of wetlands within the current footprint of the CFA in the 2050 and 2080 time projections. Of the 30 currently active colony sites, none are projected to be impacted by sea level rise by 2050, and one is projected to be impacted by (and potentially lost to) sea level rise by 2080. The one currently active large, persistent colony will not be impacted by sea level rise in either future timeframe projection. Land conversion in the CFA will increase from 8 percent to 15 percent and 22 percent by 2050 and 2080, respectively; though suitable habitat is widely available, and it does not appear that habitat is a limiting factor for wood stork resiliency. Conservation efforts are maintained at least at current levels under Scenario 1 and Scenario 2 and reduced under Scenario 3. However, in this breeding region, conservation efforts would not likely counteract the other negative influence factors considered (e.g., habitat loss within the current CFA due to sea level rise and development trends), and therefore are not likely to have a significant influence over the difference in overall future condition between Scenarios 2 and 3 in the Northwest Breeding Region.

Overall, we expect resiliency in this breeding region to remain stable under future Scenario 1, and to decline to a minor degree under future Scenarios 2 and 3. However, we expect some of that decline in resiliency to be offset by positive metrics described below under *Suitable Breeding Habitat* and *Population and Colony Turnover Trends*.

Northeast Breeding Region—Currently, there are 3,607,715 acres of wetlands within the Northeast Breeding Region CFA that support 76 colonies, of which 6 are designated large, persistent colonies.

Under Scenario 1, sea level rise is projected to impact 32 and 37 percent of the wetlands within the current footprint of the CFA by 2050 and 2080, respectively; the area impacted by (and

potentially lost to) sea level rise will include 2 of the 76 currently active colony sites in the 2050 projection (3 percent), and 11 of the 76 current colony sites in the 2080 projection (14 percent). None of the currently active large, persistent colonies in this region will be impacted by sea level rise in either future timeframe projection. Land conversion will increase from 11 percent to 16 and 21 percent of the CFA under the 2050 and 2080 timeframe projections, respectively. Conservation efforts are maintained at least at current levels under Scenario 1, making the future outlook in terms of conservation and regulatory mechanisms under Scenario 1 similar to that under Scenario 2 and better than that under Scenario 3.

Under Scenarios 2 and 3, sea level rise is projected to result in losses of 35 and 40 percent of wetlands within the current footprint of the CFA by 2050 and 2080, respectively; the area impacted by (and therefore potentially lost to) sea level rise will include 4 of the 76 currently active colony sites in the 2050 projection (5 percent), and 27 of the 76 current colony sites in the 2080 projection (36 percent). None of the currently active large, persistent colonies will be impacted by sea level rise by 2050 or 2080, and land conversion in the CFA will increase from 11 percent to 16 percent and 21 percent by 2050 and 2080, respectively. Conservation efforts are maintained under Scenario 2 and reduced under Scenario 3. However, in this breeding region, the conservation efforts under Scenario 2 would not likely counteract the other negative influence factors considered (e.g., habitat loss within the current CFA due to sea level rise and development trends), and therefore are not likely to have a significant influence over the difference in overall future condition between Scenarios 2 and 3 in the Northeast Breeding Region.

Overall, we expect resiliency to decline to some degree in this breeding region under future Scenario 1, and more so under future Scenarios 2 and 3. However, we expect some of that decline in resiliency to be offset by positive metrics described below under *Suitable Breeding Habitat* and *Population and Colony Turnover Trends*.

Suitable Breeding Habitat—Currently, there are 26.2 million acres of wetland habitat suitable for wood storks within the breeding range of the coastal plains of Florida, Georgia, South Carolina, and North Carolina (Service 2024, chapter 6.2; table 8; figure 3). Forty-two percent (10.8 million acres) is within the CFA and supports an annual breeding effort

of 10,000–14,000 breeding pairs at more than 100 colony sites. There are an additional 15.4 million acres of wetland habitat in the coastal plains that are suitable as breeding and foraging habitat for wood storks. Even under the highest

projections of sea level rise (4 feet in 2080), approximately 7.3 million of the 10.8 million acres of breeding habitat within the CFA will remain intact. Another 13.3 million additional acres of wetland habitat currently occupied by

wood storks but outside the current CFA will remain unimpacted by sea level rise and suitable for breeding and foraging (table 8; figure 3).

TABLE 8—WOOD STORK BREEDING HABITAT IN THE SOUTHEAST U.S. COASTAL PLAIN BY 2080 UNDER HIGH SEA LEVEL RISE (SLR) PROJECTIONS: TOTAL SUITABLE WETLAND HABITAT AND HABITAT EITHER IMPACTED OR UNIMPACTED BY SLR

Southeast U.S. coastal plain wetlands	Total suitable wetland acres	Suitable acres impacted by SLR	Unimpacted suitable acres
Breeding range total	26,245,187	5,715,903	20,529,284
Total within current core foraging area (CFA)	10,808,704	3,531,743	7,276,961
Total outside current CFA	15,436,483	2,184,170	13,252,323

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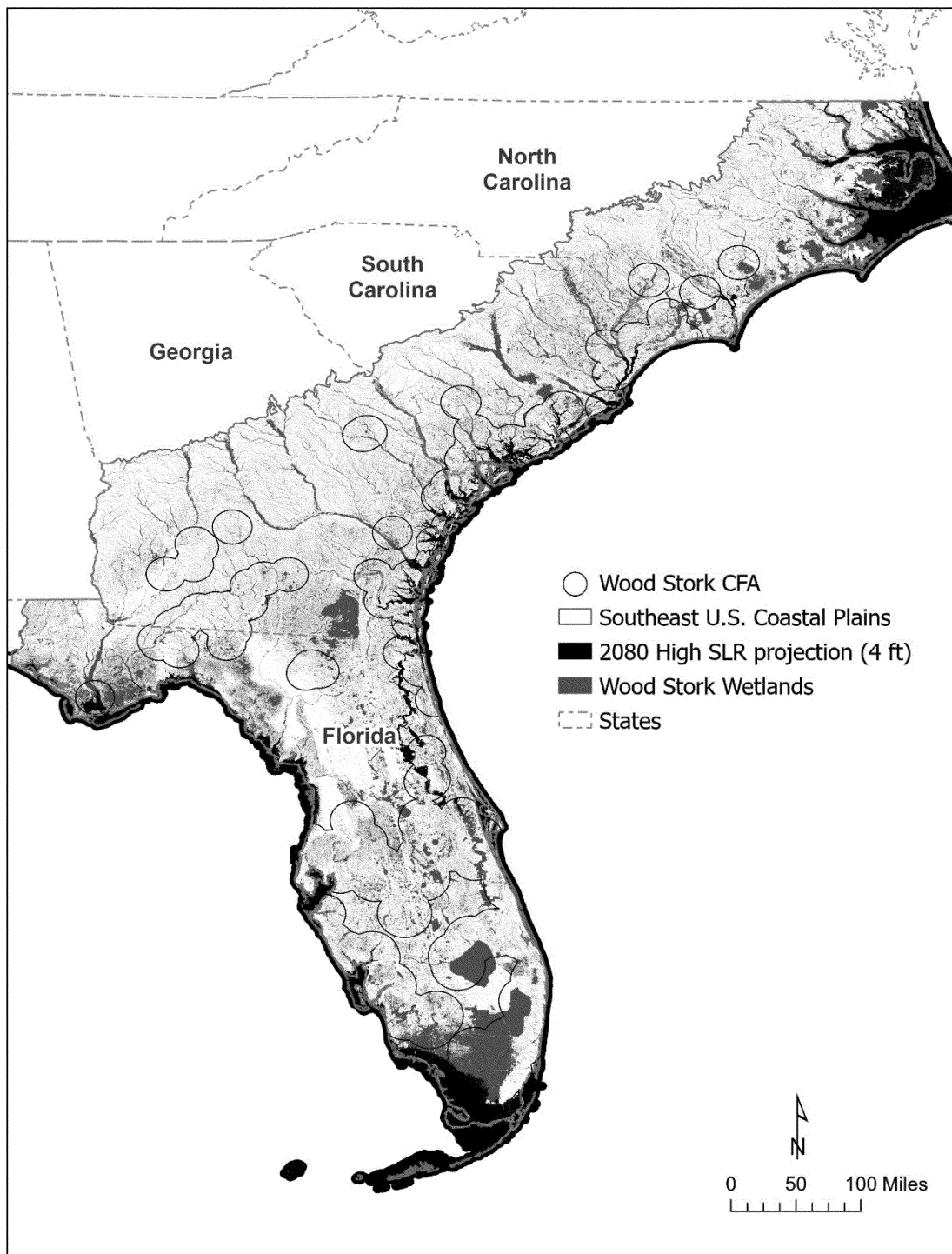


Figure 3. Suitable wetland habitat, including that within the current core foraging area (CFA), available for wood storks in 2080 given high (4 feet) sea level rise (SLR) projections across the wood stork's breeding range in the southeast U.S. coastal plain.

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In summary, while we project in our future condition analysis that sea level

rise will result in the loss of some of the occupied habitat within the current footprint of the CFA, as illustrated above, a substantial amount of suitable habitat remains in the CFA. Further, we also estimate that even under the highest projections of sea level rise that there will remain approximately 13 million acres of occupied suitable breeding and foraging habitat outside the current CFA available for wood storks to use (table 8). Thus, habitat loss

due to sea level rise is not likely to limit the resiliency of wood storks in the foreseeable future.

Population and Colony Turnover Trends—The ecological record shows that wood storks respond to environmental change. The wood stork's nesting colony site record shows that they will abandon a colony site when it is no longer suitable, or when other suitable potential colony sites provide more advantageous conditions than do

currently occupied sites, as evidenced by their use of over 300 different colony locations since listing (Service 2024, chapter 2.7.1). There are a limited number of wood stork colony losses that have been documented, primarily due to anthropogenic factors (e.g., draining). It appears that these colony losses did not result in losses of individual storks, but rather in individuals not breeding in a given year and/or shifting to nearby sites for breeding in that same or in following years (Service 2024, chapter 6.2). Wood storks may shift their habitat use in response to future inundation of coastal colonies from sea level rise; therefore, the projected loss of existing

colony sites in the following future condition discussion may not result in an equivalent reduction in the number of actual colony sites in the future, or in a reduction in the number of breeding pairs present rangewide, but rather a shift in location of individuals from current to new colony sites in some cases. We expect that this phenomenon will continue to occur and that the wood stork population and breeding range will continue to grow, shift, and expand into the amply available suitable habitat that is currently occupied by wood storks but outside the current footprint of the CFA.

We project that the wood stork's current long-term trend of positive

population growth will continue into the foreseeable future, as habitat does not appear to be a limiting factor. Though the current rangewide population of wood storks is estimated at approximately 11,000 individuals (table 1), peak nest counts from each region sum to nearly 18,000 nesting pairs, demonstrating the potential occupancy that the current habitat can support (table 6). Without limiting factors, a linear regression based upon the trend from the past 10 years projects that the future population would surpass 15,000 nesting pairs by mid-century and 20,000 pairs by the end of the century (figure 4).

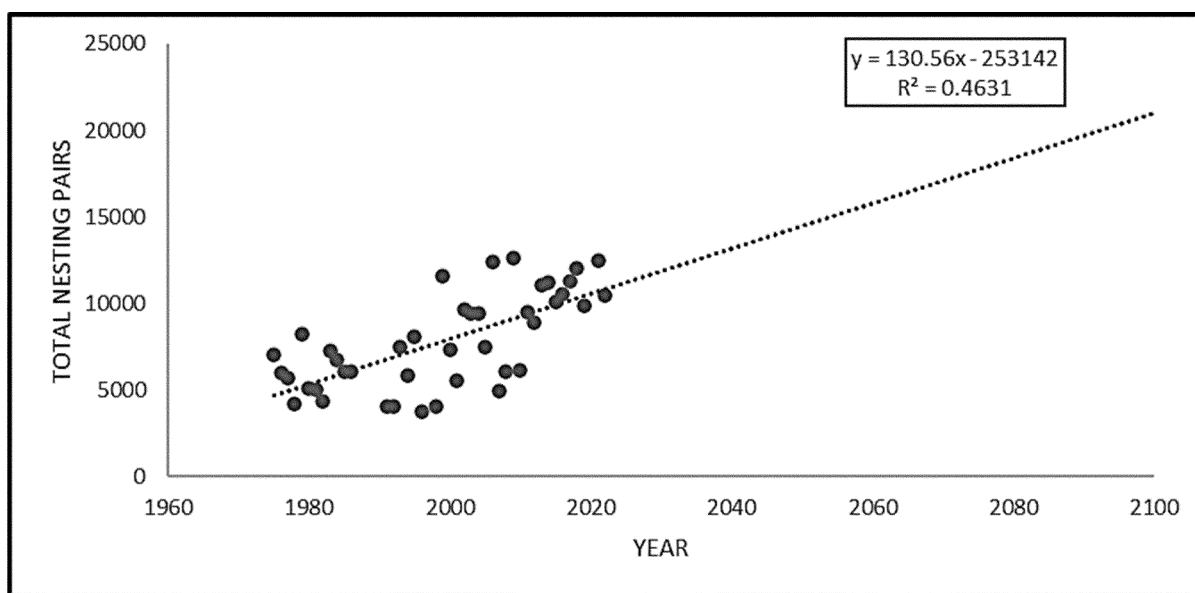


Figure 4. Long-term (1975–2022) wood stork population growth trend illustrated by annual wood stork nesting pair counts and projected out to 2100.

We also project that wood storks will vacate some currently occupied colony sites and pioneer new colonies, and that the number of active colonies will continue to grow as has been the trend

since the 1980s (table 9; figure 5), resulting in the expansion of the breeding range continuing.

TABLE 9—NUMBER OF WOOD STORK NESTING COLONIES THAT BECAME ACTIVE OR INACTIVE DURING FOUR 10-YEAR PERIODS AND THE 10-YEAR ANNUAL AVERAGE NUMBER OF COLONIES DURING THAT TIMEFRAME

[Note: There have been 322 different nesting sites since 1982.]

Wood stork colonies	1982–1991	1992–2001	2002–2011	2012–2021
New	37	90	76	47
Became inactive	22	34	55	58
10-year annual average	25	43	85	97

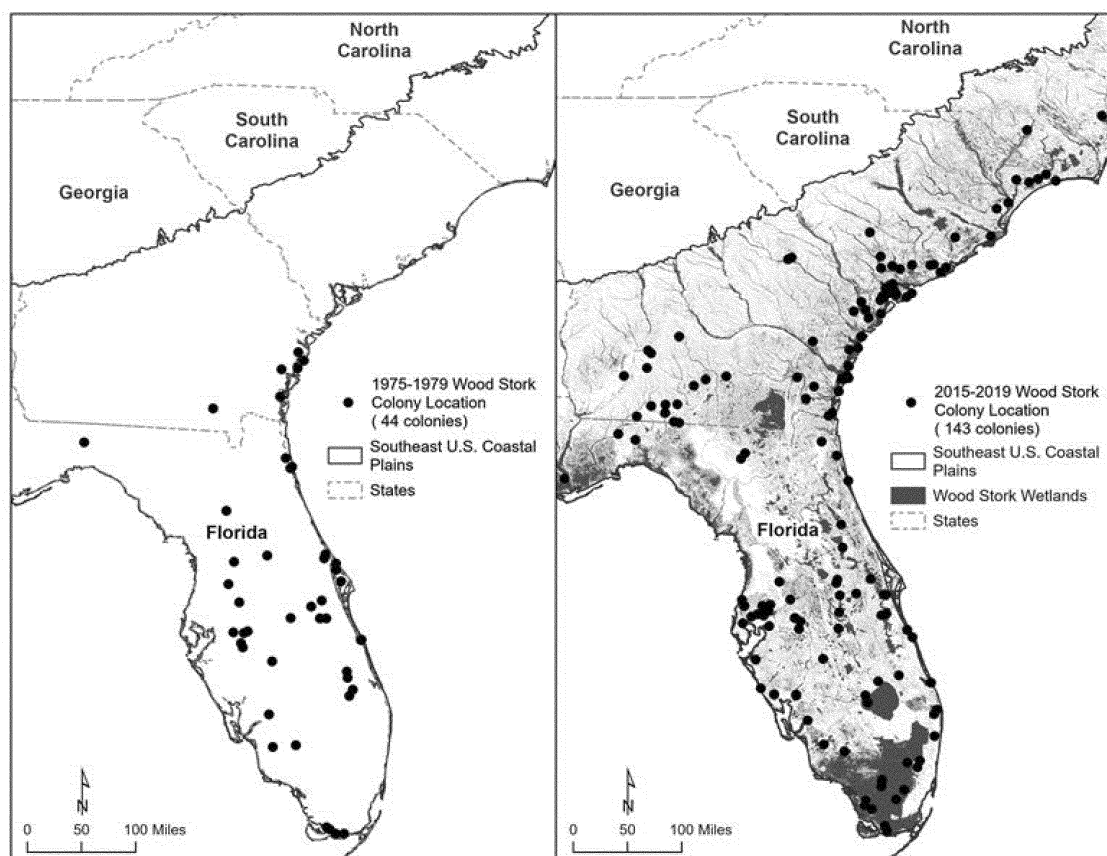


Figure 5. Active wood stork colonies 1975–1979 (left) and 2015–2019 (right); and wetland habitat generally suitable for wood storks (right).

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Future Resiliency Considerations—For our original analysis in the SSA report (version 1.0: Service 2021, entire), we projected future impacts to wood stork habitat using projections of future development, conservation actions, and the best sea level rise projections available at that time (Sweet et al. 2017, entire). We estimated the number of acres of habitat within the currently known footprint of the CFA that would be impacted by these influence factors in the future and used that as a proxy for wood stork future resiliency in the four breeding regions. Our updated SSA report (version 1.1: Service 2024, entire) employs updated sea level rise projections (Sweet et al. 2022, entire) as well as updated demographic information, such as the most recent survey data and considerations regarding nest colony site turnover and the productivity necessary to maintain populations, to project the future condition of the wood stork breeding regions.

The best scientific and commercial data available (Sweet et al. 2022, entire) indicate that our original assessment of

CFA acreage that would be lost to sea level rise projections (Sweet et al. 2017, entire) was overestimated in version 1 of our SSA report (Service 2021, chapter 6). Our updated wood stork SSA report (version 1.1: Service 2024, entire) also incorporates estimates of the amount of currently occupied suitable wood stork habitat, not restricted to the current footprint of the CFA, that would be lost to future sea level rise compared with that which would remain available under high future projections of sea level rise. This updated analysis provides a more accurate representation of suitable habitat availability for wood storks in the future in relation to sea level rise, and further reinforces our assessment that habitat will not be a limiting factor for wood storks in the future.

The latest available field survey data that we incorporated into our SSA report update is consistent with previous breeding seasons, and further maintains the stable to increasing trend that has been demonstrated in wood stork abundance and productivity across the breeding regions. We also considered the productivity recovery criteria that were necessary to achieve recovery in other bird species that are similar to the wood stork in biology and ecology and determined that

productivity targets necessary for recovery in the wood stork recovery plan were overestimated. Although the wood stork recovery plan criterion targets productivity of 1.5, productivity of 0.8 to 1.0 is likely adequate to maintain stable or increasing wood stork breeding populations, as it was for the bald eagle and brown pelican. This range of productivity has been achieved or exceeded by all the wood stork breeding regions, which helps account for the increase in abundance and number of breeding colonies that continues to be documented. Further, the consideration of colony site turnover, which is an ecological trait of wood storks that is shared by many other colonial waterbird species, also helps account for the demonstrated increases in numbers and breeding sites over time despite unfavorable environmental changes that have occurred at some of the historical colony sites.

Our consideration of updated information as well as important additional factors that have influenced, and will continue in the future to influence, wood stork resiliency has provided a more holistic and rigorous assessment of wood stork viability into the future. While the more simplified analysis of negative impacts to habitat

within the current footprint of the CFA projected a reduction in wood stork resiliency based on declines in CFA habitat condition (Service 2021, entire), we did not find these projected declines substantial enough to drive current or future wood stork viability to population decline (88 FR 9830, February 15, 2023). Our updated analysis incorporates the most recently available projections of sea level rise and wood stork survey data and includes additional wood stork habitat metrics and important demographic information to help evaluate future resiliency without relying solely upon CFA habitat metrics, all of which collectively serves to further illustrate that wood stork breeding regions will maintain adequate resiliency into the future.

Future Resiliency

In summary, wood storks have demonstrated adaptability to environmental and demographic changes through range expansion, facultative migration, and the adoption of novel foraging opportunities. We expect that the habitat and behavioral plasticity characteristics of this species will continue to allow it to respond to a dynamic and constantly changing environment into the future despite changes that occur within the current footprint of the CFA. Further, even given extreme scenarios of climate change, adequate suitable habitat for the wood stork will be available within the current CFA, and an abundance of suitable habitat will be available in currently occupied habitat outside the current CFA, indicating sustained resiliency of wood stork populations into the foreseeable future.

Future Redundancy

Overall, the future scenarios project either the continuation of current conditions or some deteriorated conditions within each of the four breeding regions. We project that overall wood stork breeding conditions will be adequate and all of the breeding regions (as currently defined) will be maintained despite varying degrees of potential habitat loss, conversion, or degradation; climate effects such as changing precipitation patterns and prolonged droughts; and reduced reproductive success. We expect that each breeding region will maintain most of the large, persistent nesting colony sites, as well as multiple other colonies, and that there will be no major reduction in the wood stork's overall range even with some of the acres within the current footprint of the CFA lost due to sea level rise. No extirpation

of any of the breeding regions is anticipated. Local losses of current core foraging habitat and colony sites (CFA) due to environmental, anthropogenic, or stochastic changes are likely to continue to cause shifts in concentrations of individuals (as has occurred in the past). However, we expect that the Southeast U.S. DPS of the wood stork will also likely continue its trend of population growth and range shift or expansion into existing nearby suitable occupied habitat outside the current CFA, and to new colony sites to replace colonies that are impacted or otherwise rendered unsuitable, leading to the continuation of all four existing breeding regions into the future. Thus, despite impacts to some sites within the CFA given certain future scenarios under consideration, we expect that the wood stork will maintain its current level of redundancy in the Southeast U.S. DPS.

Future Representation

No behavioral, genetic, morphological, or observable variations have been described within or among the breeding regions in the Southeast U.S. DPS of the wood stork. However, current representation is thought to be high due to the wood stork's historically demonstrated ability to continuously respond to changing habitat conditions and maintain and increase abundance while expanding its range northward. If current trends continue, it would be expected that the wood stork's range will continue to shift and expand. The large majority of the breeding range, which extends across four States, is predicted to maintain resiliency into the future, and thus we expect that the wood stork will continue to be represented within the southeast U.S. coastal plains within the current range of Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina. However, any decrease in future resiliency in populations could translate to a modest loss of representation (*i.e.*, decreased resiliency may result in fewer individuals, which provide less opportunity for diversity). Regardless, the wood stork has exhibited a proclivity to respond to historical changes in habitat, so despite potential losses in resiliency within the four breeding regions and the associated implications for representation, we expect that representation will remain relatively high among breeding regions in each of the future scenarios we considered.

Determination of the Southeast U.S. DPS of the Wood Stork's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that, based on the best scientific and commercial data available, the wood stork in the Southeast U.S. DPS is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range.

Currently, all four wood stork breeding regions are either increasing or stable in the number of nesting pairs and are in an overall moderate to high condition based on demographic measures including productivity; large, persistent colonies; and abundance. Thus, the wood stork exhibits adequate resiliency in all of the breeding regions.

There are more than 3.5 times the number of wood stork breeding colonies currently in existence as there were at the time of listing (108 in 2022 compared to 27 in 1984), indicating that redundancy in the population has been increasing over time. Suitable wood stork habitat is also currently abundant, with approximately 10.8 million suitable wetland acres within the CFA (figure 3; table 8) and an additional 15.4 million acres of suitable wood stork habitat outside the CFA available for breeding and foraging. Wood storks have nested at 332 different locations historically, and there are currently over 100 colonies spread throughout the

wood stork's historical breeding range and beyond that are active each year. Generally, the wood stork is distributed broadly, demonstrates plastic use of breeding colony sites, and would likely be able to recolonize any portion of its range that could be lost due to a catastrophic event. As such, the wood stork currently demonstrates a high level of redundancy.

The shift in concentration of the wood stork population from primarily south Florida northward to include Georgia, South Carolina, and North Carolina since the 1980s makes the population more resilient, as it is now less dependent on one geographical area and ecotype. Further, wood storks are now exploiting many more types of foraging and breeding habitats than they did historically, including coastal salt marsh and the adjacent freshwater wetlands of Georgia and South Carolina, and inland freshwater wetlands of southwest Georgia, in addition to manmade wetlands. They are also using both native and exotic vegetation as nesting substrate and foraging on native and exotic introduced novel prey items. Coastal salt marsh is abundant throughout the Southeastern United States and provides a more consistently reliable food source year-round than does the inland freshwater wetland habitat upon which the population was dependent historically. The wood stork's shift from dependence primarily on freshwater wetlands during the breeding season to also use coastal, tidally influenced fresh, brackish, and salt marsh as well, means that it is less reliant on favorable climate and weather patterns, and less vulnerable to unfavorable anthropogenic influences, all of which influence the seasonal hydrological cycles that dictate prey availability in inland freshwater wetland ecosystems. All of these factors indicate high adaptive capacity and, therefore, adequate representation within the population.

Further, conservation and favorable management have increased since the time of listing in 1984, and many regulated wetlands are now being managed in ways that allow for public water management goals to be met while also providing suitable conditions for wood stork breeding and foraging. With moderate to high resiliency in each breeding region, and adequate redundancy and representation in the Southeast U.S. DPS of the wood stork, the wood stork is not currently in danger of extinction throughout the DPS's range.

We next considered whether the Southeast U.S. DPS of the wood stork is likely to become in danger of extinction

throughout its range in the foreseeable future. We determined the foreseeable future as approximately 2080, as that is the timeframe in which we can make reasonably reliable predictions about both the threats to the wood stork and the wood stork's response to those threats. Two time-steps (2050 and 2080) were considered for the future condition analysis. These time-steps are within the predictive range of the model used to project future development for the southeastern U.S. coastal plains (Terando et al. 2014, entire), are within the climate change forecasts that cover the Southeastern United States (Sweet et al. 2022, entire), and represent 7 and 15 wood stork generations, respectively, which allows for adequate time to predict a population response to the influence factors we analyzed.

Climate change (Factor E) is likely to lead to increased hurricane intensity and changes to precipitation patterns in the future, but these impacts are likely to vary locally, and the wood stork's response to these changes could be positive, negative, or both. Projections of increased temperature may lead to increased evaporative deficit and greater potential for drought-like conditions, which over time would likely reduce resiliency of wood stork populations to some degree, although these effects would likely vary locally. In addition, sea level rise will displace wood storks from some of their currently occupied coastal foraging and breeding habitat in the future. However, sea level rise will also create new tidally influenced marsh habitats that wood storks will be able to exploit, as coastal wetland ecosystems will migrate upslope and continue to occupy the ocean-land interface. Further, habitat does not appear to be a limiting factor, as there is an abundance of suitable freshwater wetland and salt marsh habitat available that is not yet being used by the expanding wood stork population. The Southeastern United States has nearly 48 million acres of estuarine, riverine, lacustrine, and palustrine wetlands, accounting for more than 43 percent of the Nation's palustrine and estuarine wetlands (Sucik and Marks 2015, p. 11). In 2080, high sea level rise projections of 4 feet would impact 3.5 of the 10.8 million acres of wood stork habitat within the CFA, leaving 7.3 million acres of suitable habitat within the CFA intact, and an additional 13.3 million adjacent acres of suitable habitat outside the current footprint of the CFA intact (figure 3; table 8). Thus, while sea level rise will render some currently suitable habitat unusable for wood storks, the best scientific and commercial data

available indicate that there will be ample suitable habitat available for use within the foreseeable future even under scenarios of future sea level rise.

Wood storks exhibit behavioral plasticity, with some individuals readily responding to changing environmental conditions by employing facultative migration and optimizing use of breeding and foraging habitat within and among colony sites, breeding regions, and breeding years. In addition, colony site turnover, or the periodic establishment of new colonies in sites that offer more advantageous conditions than old ones, is a behavioral trait of wood storks that is also shared by many other colonial waterbird species. The wood stork's behavioral flexibility suggests that the species will have the ability to adjust to changing habitat conditions into the future, just as they currently do and have done historically, in response to anthropogenic changes to the Greater Everglades. Therefore, we expect that, wood storks in the Southeast U.S. DPS will be able to tolerate and respond to shifts in suitable habitat within the foreseeable future.

Habitat conversion due to urbanization (Factor A) is the other population-level threat to the wood stork. Land use modeling shows that urban and suburban expansion and development will continue to impact currently occupied habitat to a similar degree throughout the range of the wood stork. However, conservation efforts are expected to help to mitigate this threat, and wood storks have adapted to human landscapes successfully in many areas throughout their range.

Regulatory and voluntary conservation programs are ongoing and benefit wood stork foraging and breeding habitat, and include efforts to maintain and protect existing wetlands and colony sites, acquire wetland habitat for maintenance and protection, create new wetland habitat, and restore previously impacted habitat. These efforts have been implemented for years and have been demonstrated to be effective. There are many Federal laws and regulations for the restoration, management, and protection from alteration, degradation, and destruction of wetland resources (Votteler and Muir 2002, entire), including, but not limited to: the Clean Water Act (33 U.S.C. 1251 *et seq.*); Migratory Bird Treaty Act (16 U.S.C. 703–712); National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee); North American Wetlands Conservation Act of 1989 (16 U.S.C. 4401 *et seq.*); Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*); Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*);

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); Sike Act (16 U.S.C. 670a *et seq.*); and the National Wildlife Refuge System Improvement Act (16 U.S.C. 668dd).

Even in the absence of the Act's protections, as a wetland-dependent species, wood storks will continue to benefit from wetland restoration and protection. For example, the Comprehensive Everglades Restoration Plan (CERP), authorized by the Water Resources Development Act of 2000 (33 U.S.C. 2201 *et seq.*), remains among the highest national conservation priorities for the Service and one of Florida's primary wetland conservation initiatives. The CERP includes performance goals for wood storks, such as achieving 1,500 to 3,000 nesting pairs annually and that the initiation of breeding shifts back to winter months each year to maximize successful productivity. Contributions of the CERP are evidenced by the large reproductive effort in 2009 when 6,452 pairs of wood storks nested in south Florida, and thousands of chicks fledged before the onset of the rainy season (Cook and Kobza 2009, pp. 1–2). As such, this unique Federal/State partnership drives Everglades and Big Cypress restoration efforts, and we anticipate will continue to support and lead to a robust wood stork breeding population within the foreseeable future.

The wood stork's past and continued recovery is owed in part to conservation efforts to protect and restore wetlands. Because many of these conservation efforts are aimed at wetland protection and restoration, and therefore unrelated to species-specific protections, we expect that they will continue to benefit the Southeast U.S. DPS of the wood stork into the foreseeable future regardless of its status under the Act.

Further, the wood stork's increased use of urban and suburban environments, and human-made and -altered wetlands, indicates that the wood stork is more likely to tolerate at least some degree of urbanization compared with other species that rely more exclusively on relatively unaltered natural ecosystems.

We anticipate that the wood stork's positive population growth rate will continue into the near future, and peak nest counts from each region (summing to more than 18,000 nesting pairs, collectively) indicate that the habitat can support this growth. We also expect that wood storks will continue to pioneer new colony sites within the four breeding regions, and that the expansion of the breeding range will continue as

the number of colonies continues to grow as has been the trend since the 1980s. As such, we expect that the wood stork will maintain robust (sufficiently resilient) breeding colonies comparable in size and distribution to those that exist today in each of the breeding regions, across and beyond its historical range (redundancy), and will continue to demonstrate high adaptive capacity (representation) by making use of its ecological and behavioral plasticity in order to optimize survival and productivity now and into the future despite varying degrees of threats due to habitat loss and climate change. Thus, after assessing the best commercial and scientific data available, we conclude that the wood stork is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. Having determined that the wood stork is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction (*i.e.*, endangered) or likely to become so within the foreseeable future (*i.e.*, threatened) in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction or likely to become so in the foreseeable future in that portion. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for the wood stork, we choose to address the status question first. We began by identifying portions of the range where the biological status of the species may be different from its biological status elsewhere in its range. For this purpose, we considered information pertaining to the geographic distribution of (a) individuals of the species, (b) the threats that the species faces, and (c) the resiliency condition of populations.

We evaluated the range of the wood stork to determine if the species is in danger of extinction now or likely to become so within the foreseeable future throughout any portion of its range. The

range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the Act's definition of an endangered species or a threatened species. For the wood stork, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in the rest of the range such that the species is in danger of extinction now or likely to become so within the foreseeable future in that portion. We examined sea level rise and other threats associated with climate change, and urbanization, including cumulative effects.

We focused our analysis on the four wood stork breeding regions described in the SSA report (Northwest, Northeast, Central, and South) (Service 2024, chapter 3.2). At the outset we note that all of the wood stork recovery targets originally established in the recovery plan have been met or exceeded in the Northwest, Northeast, and Central breeding regions. The productivity metric alone in the South Breeding Region has not been fully achieved in the manner specifically identified in the recovery plan. The target set in the recovery plan for productivity is a 5-year average of 1.5 chicks fledged per nest per year, and that metric for the South Breeding Region has fluctuated between 0.8 and 1.1 for the past 5 years and has been relatively stable just below 1 for over a decade. This level of productivity has been shown to reflect stable or growing populations for other similar species. Further, annual productivity less than 1 is to be expected for a long-lived species like the wood stork where an individual needs to reproduce successfully only once in its lifetime to replace itself, but often has multiple attempts throughout its life to do so. For example, both the brown pelican and bald eagle are similarly long-lived, fish-eating birds associated with aquatic environments that fully recovered with annual productivity rates that were less than 1. In conclusion, productivity appears to be sufficient in maintaining a relatively stable breeding population in the South Breeding Region. Accordingly, we consider the intent of the recovery criteria for productivity as having been met for the South Breeding Region. More importantly for our determination though, the South Breeding Region's 5-year average productivity rate of approximately or slightly below one chick/nest/year does not indicate an endangered or threatened status for the individuals that breed in the South

Breeding Region (*i.e.*, does not indicate that the individuals that breed in that portion of the range are at risk of extinction now or in the foreseeable future).

In addition to the intent of the recovery criteria in the South Breeding Region being satisfied either effectively or explicitly as defined in the recovery plan, the South Breeding Region supports a robust and growing wood stork population. While the breeding population in the South Breeding Region continues to fluctuate naturally as it has historically (Frederick and Ogden 2001, pp. 484–485; Frederick et al. 2009, p. s85), it has been stable or increasing for over a decade (table 3) and appears to be contributing to the overall expansion and growth of the DPS as a whole (table 1; figure 5). In summary, there is no indication that individuals in the South Breeding Region are in danger of extinction now or likely to become so in the foreseeable future.

In addition to determining that each region has met (or effectively met) its recovery criteria, we considered whether the threats or their effects on the wood stork are greater in any portion of its range than in the rest of the range such that the wood stork is in danger of extinction now or likely to become so within the foreseeable future in that portion.

Climate change is projected to result in warmer temperatures, increased precipitation, increased evaporative deficits (drought-like conditions), and increased intensity of hurricanes, but the effects of these factors on the resiliency of the wood stork are expected to vary locally depending on ecological conditions and landscape attributes at each colony site. While downscaled climate models may in some cases provide higher confidence projections for localized effects, they are not available for comparison across all of the wood stork's distribution. Instead, projections for climate variables that are available for comparison across all colony sites are at the scale of the South Atlantic–Gulf Region, which includes the entirety of the wood stork's current U.S. distribution. We consider this regional climate projection to be the best scientific and commercial data available regarding the potential effects of climate change that may affect the wood stork in this region. As such, our analysis of these projections does not indicate that any one portion of the wood stork's range will be more impacted by the effects of increasing temperatures, changes in precipitation patterns, and drought-like conditions than any other.

Sea level rise projections are similar across the range of the wood stork, with an increase of 1 to 2 feet expected by 2050 across all breeding regions, and 3 to 4 feet expected by 2080 across all breeding regions, depending on whether the intermediate or high sea level rise scenario is considered. While sea level rise projections may be similar throughout the wood stork's range, impacts to wood stork resiliency are expected to be most pronounced in the Northeast Breeding Region, as it is in closer proximity to the coastline when compared to the other breeding regions. Tidal freshwater marshes will shift and possibly decline in size as saltwater intrudes and brackish marshes migrate inland to replace them. Some currently occupied wood stork habitat will be lost as sea level rises, but new habitat is also likely to become available, as marsh migration models indicate a net expansion in coastal marshes in response to sea level rise in many places (Kirwan et al. 2016b, p. 4366). Further, we know that even with the highest sea level rise projections (4 feet by 2080) that only 32 percent of suitable habitat within the current footprint of the CFA will be impacted, and 13.3 million adjacent acres of suitable habitat will be unimpacted by sea level rise and available for continued use by wood storks. Thus, even under this future scenario, the wood stork would retain sufficient resiliency.

Further, given the wood stork's tendency to shift both geographically and behaviorally in order to take advantage of optimum breeding and foraging conditions, and the abundance of suitable habitat that still exists in this region, we expect the wood storks in the Northeast Breeding Region will continue to form new colonies within their occupied range in response to the effects of sea level rise. Accordingly, we expect that the Northeast Breeding Region will not only remain sufficiently resilient, but also a valuable and productive part of the wood stork's distribution into the future. Therefore, despite changes to habitat that result from sea level rise, wood storks in this breeding region are not likely to have a different status.

Models project that urbanization and land conversion will continue to occur into the future across the range of the wood stork, and impacts will be relatively evenly distributed among breeding regions. Specifically, the urbanization model projects that under the worst-case future scenarios and over the longest timeframe (to 2080), developed areas within the CFA will increase by a maximum of 10 to 14 percentage points depending on the

breeding region (*i.e.*, increasing from 18 to 30 percent in the South Breeding Region, from 25 to 39 percent in the Central Breeding Region, from 8 to 22 percent in the Northwest Breeding Region, and from 11 to 21 percent in the Northeast Breeding Region). As such, no one area of the wood stork's range will be impacted significantly more by urbanization than any other and, consistent with discussions above, wood storks populations in the various breeding regions are expected to retain sufficient resiliency that the species does not meet the definition of a threatened or endangered species in any individual region. Regulatory and voluntary conservation efforts that help mitigate the impacts of urbanization are also well distributed across the range of the wood stork, and multiple examples of ongoing efforts in all four breeding regions can be found in the SSA report (Service 2024, chapter 5.3).

In general, while the degree to which threats such as sea level rise and urbanization will impact the wood stork varies to some extent at different locations, the populations within the various locations are stable or increasing, and we project these trends to continue into the foreseeable future across the breeding regions so that the future status of wood storks among breeding regions does not differ. Additionally, the Southeast U.S. DPS of the wood stork consists of a single, genetically undifferentiated population where a proportion of the individuals move between and among breeding colonies and breeding regions, both inter- and intra-annually. The fluid nature of the wood stork population across its range means that even if certain colony sites or geographical areas experience an increase in exposure to a certain threat at a given time and location, the movement of individuals among colony sites throughout the range would prevent any one group of individuals from being disproportionately affected.

In conclusion, we found no portion of the wood stork's range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range such that the status of the species in that portion differs from its status in any other portion of the species' range.

Therefore, we find that the species is not in danger of extinction now or likely to become so within the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity v.*

Jewell, 248 F. Supp. 3d. 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (79 FR 37578; July 1, 2014), including the definition of “significant” that those court decisions held to be invalid.

Determination of Status

Based on the best scientific and commercial data available, we determine that the wood stork does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11(e)(2) currently in effect, the wood stork has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species. Therefore, we are removing the wood stork from the Federal List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule revises 50 CFR 17.11(h) by removing the wood stork from the Federal List of Endangered and Threatened Wildlife. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to this species. Federal agencies will no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the wood stork.

There is no critical habitat designated for this species, so there will be no effect to 50 CFR 17.95. Removal of the wood stork from the List of Endangered and Threatened Wildlife does not affect the protection given to all migratory bird species under the Migratory Bird Treaty Act.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the

decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We have prepared a PDM plan for the wood stork. We published notification of the availability of a draft PDM plan with the proposed delisting rule (88 FR 9830, February 15, 2023), and we did not receive any comments on the plan. Therefore, we consider the plan final. As discussed in the proposed rule, the PDM plan: (1) Summarizes the status of the wood stork at the time of proposed delisting; (2) describes frequency and duration of monitoring; (3) discusses monitoring methods and potential sampling regimes; (4) defines what potential triggers will be evaluated to address the need for additional monitoring; (5) outlines reporting requirements and procedures; (6) proposes a schedule for implementing the PDM plan; and (7) defines responsibilities. It is our intent to work with our partners towards maintaining the recovered status of the wood stork.

Required Determinations

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (“Government-to-Government Relations With Native American Tribal Governments,” 59 FR 22951, May 4, 1994), E.O. 13175 (“Consultation and Coordination with Indian Tribal Governments”), the President’s memorandum of November 30, 2022 (“Uniform Standards for Tribal Consultation,” 87 FR 74479, December 5, 2022), and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations on a government-to-government basis. In accordance with S.O. 3206 of June 5, 1997 (“American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act”), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We informed the Seminole Indian Tribe of Florida and Miccosukee Indian Tribe of Florida in November 2019 that the wood stork

assessment had been initiated, and invited their participation. In February 2021, we contacted affected Tribes with an opportunity to review the draft SSA report and received no responses. FWS received no comments from Tribes during the public comment period on the proposed delisting rule.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2022-0099 and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by removing the entry for “Stork, wood [Southeast U.S. DPS]” under BIRDS.

Brian Nesvik,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2026–02588 Filed 2–9–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XF427]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Longline Category Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 30.8 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Longline category. With this transfer, the adjusted Longline category quota for the 2026 fishing season is 240.1 mt and the adjusted Reserve category quota is 7.4 mt. The 2026 BFT Longline category is open until December 31, 2026, or until the Longline category quota is reached, whichever comes first. NMFS will distribute the transferred quota to permitted Atlantic Tunas Longline vessels with recent fishing activity. As a result of this transfer, each associated Individual Bluefin Quota (IBQ) account will receive 893 pounds (lbs) (0.4 mt) of IBQ. Note that NMFS intends to take separate action as soon as possible in 2026 to consider modifying the baseline BFT quota consistent with the quota adopted at the 2025 International Conservation of Atlantic Tunas (ICCAT) annual meeting.

DATES: The quota transfer is effective February 9, 2026, through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., (larry.redd@noaa.gov), Ann Williamson (ann.williamson@noaa.gov), Tobey Curtis (tobey.curtis@noaa.gov), or Brad McHale (brad.mchale@noaa.gov) by email or by phone at 301-427-8503.

SUPPLEMENTARY INFORMATION: Atlantic BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (HMS FMP) and its amendments, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). ATCA is the implementing statute for binding recommendations of the International Commission for the Conservation of Atlantic Tunas. HMS implementing regulations are at 50 CFR part 635. Section 635.27(a) divides the U.S. BFT quota, established by the ICCAT and as implemented by the United States among the various domestic fishing categories, per the allocations established in the HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,316.14 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The baseline quotas for the Longline and Reserve categories are 209.3 mt and 38.2 mt, respectively. The Longline category quota is intended to be used for incidental catch of BFT as longline vessels must use IBQ to account for their incidental BFT landings and dead discards while fishing for swordfish, bigeye tuna, and yellowfin tuna (*see* § 635.15).

Separate from this action, NMFS is working on a rulemaking that would implement the 2025 ICCAT recommendation (Recommendation 25-05) regarding western BFT management. Consistent with that recommendation, the separate rulemaking action would consider increasing the baseline U.S. BFT quota from 1,316.14 mt to 1,509.98 mt and adjusting any subquotas as needed accordingly. In the next few months, NMFS expects to issue a proposed rule regarding the overall quota increase and resulting subquota calculations. Any final rule implementing ICCAT Recommendation 25-05 would likely be effective in mid-2026 or later.

Transfer From the Reserve Category to the Longline Category

Under § 635.27(a)(8), NMFS has the authority to transfer quota among fishing categories or subcategories after considering determination criteria provided under § 635.27(a)(7). In this action, NMFS is transferring 30.8 mt from the Reserve category to the Longline category. This transfer results in 240.1 mt (209.3 mt + 30.8 mt = 240.1 mt) being available for the Longline category through December 31, 2026, or until the Longline category quota is reached, whichever comes first. This transfer also results in 7.4 mt (38.2 mt—30.8 mt = 7.4 mt) being available in the Reserve category through the remainder of 2026 fishing year, unless modified in another action. As required and described below, NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer.

Unlike transfers made to avoid a closure (§ 635.27(a)(7)(ii)), this transfer is instead a proactive measure to increase flexibility in the availability of IBQ early in the year within the current quota levels. In recent years, NMFS has received feedback from some vessel owners that pelagic longline fishery participants may be taking less fishing

trips at the beginning of the year due to higher abundances of BFT on fishing grounds that could result in more BFT interactions. Under this scenario, vessels may be concerned that they will not have enough IBQ to account for BFT retained or discarded dead later in the year. The ability of pelagic longline vessel owners to account for BFT with allocated quota or to lease IBQ at an affordable price is key to the success of the IBQ Program and thus to optimize fishing opportunities. Note, as part of the IBQ Program, Atlantic Tunas Longline permit holders may lease available quota allocations to other permit holders that either received or did not receive IBQ allocation (*see* 635.15(g)). As such, this proactive transfer could optimize current fishing opportunities (§ 635.27(a)(7)(x)), and facilitate quota accounting (§ 635.27(a)(7)(xi) and (xii)). Specifically, this quota transfer would contribute to full accounting of BFT catch by vessels that accrue quota debt (*i.e.*, reduce quota debt), enhance the likelihood that share recipients will lease IBQ to others in order to avoid quota debt, and reduce uncertainty in the pelagic longline fishery as a whole. Furthermore, this transfer considers variations in seasonal distribution, abundance, or migration patterns of BFT (§ 635.27(a)(7)(vi)). Transferring quota early in 2026 helps to address the diversity of the fishery with respect to the timing of those fishing earlier in the year when there tends to be more BFT available on fishing grounds. As discussed in more detail in the section below, the additional quota will be distributed to vessels with recent fishing activity in the Longline category to help vessel owners account for BFT catch while fostering conditions in which permit holders become more willing to lease IBQ to other vessels through the IBQ system.

Longline vessels must use IBQ to account for their incidental BFT landings and dead discards while fishing for swordfish, bigeye tuna, and yellowfin tuna. Under § 635.15(f)(2), vessels in the pelagic longline fishery account for bycatch of BFT using IBQ on a quarterly basis. For the first fishing trip in a calendar year quarter, as defined at § 635.15(f)(2), a vessel is not allowed to fish with pelagic longline gear if it does not have the minimum IBQ allocation available (*i.e.*, 276 lb ww (0.125 mt ww) to depart on a fishing trip in the Atlantic and 551 lb ww (0.25 mt ww) to depart on a fishing trip in the Gulf of America). Transferring 30.8 mt of quota from the Reserve category and distributing that quota to vessels with

recent fishing activity in the Longline category could provide limited additional opportunities to harvest swordfish, bigeye tuna, and yellowfin tuna without exceeding the U.S. BFT quota available to account for incidental BFT catch during those operations.

Regarding the projected ability of the vessels fishing under the Longline category to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(7)(iii)), NMFS considered Longline category BFT landings over the last several years and landings to date this year. Since BFT landings in the Longline category are incidental in nature, landings are highly variable and depend on access to target species (swordfish, bigeye tuna, and yellowfin tuna), fishing conditions, and the area being fished, among other factors. By transferring quota now, NMFS anticipates that the Longline category permit holders would have quota sufficient to encourage leasing between permit holders, without limiting NMFS' ability to meet other needs with the Reserve quota for the remainder of the year. Specifically, transferring more quota now may provide permit holders more certainty that they will have enough IBQ to account for BFT retained or discarded dead throughout the year, which may result in more leases of IBQ to other vessels that need IBQ to go fishing for target species earlier in the year.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(7)(iv)) and the ability to account for all 2026 landings and dead discards (§ 635.27(a)(7)(xi)). With the exception of 2024, the total U.S. BFT landings in recent years are typically below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. When total U.S. BFT landings are above the available U.S. quota, the United States reduces the next year's quota by the overharvest amount. NMFS will need to account for 2026 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that. This quota transfer, which is within current quota levels, would reduce the likelihood of vessels using all their IBQ allocation early in the year, enhance the likelihood that share recipients will lease some of their IBQ allocation to others, and reduce uncertainty in the pelagic longline fishery as a whole.

NMFS also considered the effects of the transfer on the BFT stock and on accomplishing the objectives of the HMS FMP (§ 635.27(a)(7)(v) and (vi)). This transfer would be within the established quotas and subquotas, which are implemented consistent with ICCAT recommendations, ATCA, and the objectives of the HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations.

Another consideration is the objective of providing opportunities to harvest the available Longline category quota without exceeding the annual BFT quota, based on the objectives of the HMS FMP and its amendments, including the National Standard 1 requirement to achieve optimum yield from each fishery on a continuing basis. An inseason transfer of quota to the Longline category at this time would optimize fishing opportunities for the pelagic longline fishery, allow more efficient access to target species (e.g., swordfish and yellowfin tuna), contribute to full accounting for BFT landings and dead discards, and reduce uncertainty in the pelagic longline fishery as a whole, thus facilitating the achieving of optimum yield. Quota transferred from the Reserve category and distributed directly to vessels with recent fishing activity should reduce situations where fishing opportunities for target species such as swordfish and yellowfin tuna are constrained by a vessel not having its own IBQ allocation or by a fishery participant not finding affordable quota (or sufficient quota) for lease.

Distribution of Transferred Quota Within the Longline Category

Under § 635.15(e)(2), NMFS may distribute quota that is transferred inseason to the Longline category to all IBQ shareholders or to all permitted Atlantic Tunas Longline vessels that are determined to have any recent fishing activity in the previous year. Also under § 635.15(e)(2), any distribution of quota transferred inseason will be equal among eligible IBQ shareholders or active vessels. As described below, NMFS has considered all of the relevant factors provided under § 635.15(e)(2) to determine the distribution of quota in this inseason quota transfer. After considering all of the relevant factors, NMFS has decided to distribute the 30.8

mt of quota transferred from the Reserve category to Atlantic Tunas Longline vessels with recent fishing activity as these vessels most likely need quota in order to account for BFT interactions. These participants should receive their equal distribution of 893 lbs (0.4 mt) in their IBQ account shortly.

In 2022, NMFS published a final rule for Amendment 13 to the HMS FMP (Amendment 13), which among other things, implemented an annual dynamic determination of IBQ shares based upon each individual permitted vessel's fishing effort using the number of pelagic longline sets, relative to the total amount of pelagic longline sets fishery-wide. NMFS has considered all relevant data sources consistent with § 635.15(e)(2), and has determined that 76 vessels have recent fishing activity in the pelagic longline fishery. These 76 vessels have already received a 2026 IBQ allocation.

In reviewing the previous and current BFT landings and dead discards in the longline fishery, preliminary data indicate that these 76 pelagic longline vessels continuously interact with BFT across the year. NMFS expects that these vessels and any vessels that lease IBQ will likely also interact with BFT early in 2026. These 76 vessels account for BFT catches using IBQ, as required by the regulations at § 635.15(f)(3)(i). Distributing quota to active vessels provides a focused and efficient distribution of quota to those that need it and will help reduce uncertainty and facilitate better business decisions and a more effective leasing program for the remainder of the year. Alternatively, distributing quota to permitted vessels that have not actively fished recently and do not otherwise have 2026 IBQ allocation would reduce the amount of IBQ given to each vessel and therefore may not provide the benefits expected by the transfer as stated above.

Regarding the annual amounts of IBQ allocation and the amount of BFT quota in Reserve category quota, NMFS considered that the annual amount of Longline category quota allocated in the IBQ system for 2025 and 2026 is the baseline Longline category quota of 209.3 mt (not including the 25 mt for the NED). The Reserve category quota totals 38.2 mt. Although this transfer will reduce the Reserve category quota to 7.4 mt, NMFS anticipates having sufficient quota available in the Reserve category for any future transfers, as appropriate. As described above, NMFS is currently working on a rulemaking to implement ICCAT Recommendation 25-05. This rulemaking would consider an increase to the U.S. BFT quota and subquotas, including the Reserve and

Longline category quotas, as appropriate.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Per § 635.5(b)(2)(i)(A), dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, pelagic longline vessel owners are required per § 635.35(a)(4) to report their own catch of all BFT through VMS. Longline category permit holders are reminded that all BFT discarded dead must be reported through VMS, and accounted for in the online IBQ system, consistent with requirements at § 635.15(a).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access <https://hmspermits.noaa.gov>, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) and regulations at 50 CFR part 635 and this action is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary to the public interest. Specifically, the regulations implementing the HMS FMP and amendments provide for inseason adjustments and quota transfers, including for the longline category, to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, the regional variations in the BFT fishery, and the need to optimize fishing opportunity. Providing prior notice and opportunity for public comment is impracticable and contrary to the public interest as this fishery is currently underway and a quota transfer needs to happen early in the year to facilitate

effective leasing and more certainty in operational decisions. Delaying this action could result in adverse impacts for those permitted Atlantic Tunas Longline vessels that would otherwise have an opportunity to reduce or resolve quota debt, lease quota to other vessels, as well as delay potential beneficial effects like the ability for vessel operators to make plans for their participation in target fisheries for other species later this year. Additionally, a delay in implementing this transfer would preclude the fishery from harvesting target species that are currently available on fishing grounds (*i.e.*, due to IBQ constraints). This action does not raise conservation and management concerns and would support effective management of the BFT fishery. Transferring quota from the Reserve category to the Longline category does not affect the overall ICCAT-allocated U.S. BFT quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the IBQ program, U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d)(3), there is good cause to waive the 30-day delay in effective date.

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

Dated: February 6, 2026.

David R. Blankinship,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026-02626 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 250312-0037; RTID 0648-XF494]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2026 Gulf of Alaska Pacific Cod Total Allowable Catch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2026 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) Pacific cod fisheries. This action is necessary

because NMFS has determined that TACs are incorrectly specified, as they are not informed by the most recent Pacific cod stock assessment, and that adjustments to TACs are necessary to prevent harvest of incorrectly specified TACs. This action will ensure the GOA Pacific cod TACs are based on the best scientific information available concerning the stock status for Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the GOA (FMP).

DATES: Effective February 10, 2026, through 1200 hours, A.l.t., March 17, 2026, unless otherwise modified or superseded through publication of the final 2026 and 2027 harvest specifications for GOA groundfish in the **Federal Register**.

Comments must be received no later than February 25, 2026.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA-NMFS-2024-0124 by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2024-0124 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

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).

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the FMP prepared and recommended by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2025 and 2026 harvest specifications for groundfish in the GOA set the 2026 Pacific cod TAC at 22,235 metric tons (mt) in the GOA (90 FR 12468, March 18, 2025). In December 2025, the Council considered and recommended updated 2026 specifications for Pacific cod as part of the final 2026 and 2027 harvest specifications. As recommended by the Council in December 2025, the overfishing limit (OFL) was set at 36,459 mt for the GOA-wide stock and the apportionment of the allowable biological catch (ABC) was set at 8,182 mt, 19,263 mt, and 2,748 mt for the Western Gulf Regulatory Area (WGOA), Central Gulf Regulatory Area (CGOA), and the Eastern Gulf Regulatory Area (EGOA), respectively. In December 2025, the Council also recommended a 2026 Pacific cod TAC of 21,826 mt for the GOA, which is less than the 22,235 mt established by the final 2025 and 2026 harvest specifications for groundfish in the GOA. The decrease in TAC was due to the Alaska Board of Fisheries (BOF)'s increase in the State of Alaska (State) guideline harvest level (GHL) from 30 to 35 percent for the WGOA in October 2025.

NMFS adjusted the 2026 Pacific cod TAC to 21,826 mt (90 FR 60022, December 23, 2025) consistent with the Council's recommendation. Because the GHL had increased for the WGOA, the WGOA TAC and GOA-wide TAC were adjusted to account for that increase to ensure that the sum of all Pacific cod removals from State and Federal waters in the GOA do not exceed the Pacific cod ABC.

Stock assessments were not completed in 2025 due to the lapse in Federal appropriations and resulting government shutdown from October 1, 2025, through November 12, 2025. The December 2025 Scientific and Statistical Committee's (SSC's) recommendations for Pacific cod in the GOA were informed by the Groundfish Plan Team's recommended OFL and ABC from their November 2024 meeting as well as a review of the most recent Stock Assessment and Fishery Evaluation report dated November 2024.

In December 2025, the Council requested the Alaska Fisheries Science Center update the stock assessment for Pacific cod in the GOA and provide the assessment to the Groundfish Plan Team for review. In January 2026, the Groundfish Plan Team reviewed the assessment and recommended OFL and ABC based on the updated Pacific cod stock assessment. At the February 2026 Council meeting, the SSC reviewed the updated stock assessment and made their own recommendations for OFL and ABC. The Council then recommended a 2026 Pacific cod TAC based on the SSC's OFL and ABC recommendations. As recommended by the SSC and Council in February 2026, the OFL is 49,782 mt and the ABC is 41,520 mt for the GOA-wide stock. The apportionment of the ABC is 10,297 mt, 28,732 mt, and 2,491 mt for the WGOA, CGOA, and EGOA, respectively. The TACs are adjusted from the ABC to account for the State's GHL for each subarea to ensure that the sum of all Pacific cod removals from State and Federal waters in the GOA do not exceed the Pacific cod ABC. These adjustments account for the GHL increase from 30 to 35 percent for the WGOA established by the BOF in October 2025 and an increase from 25 to 27 percent for the EGOA established by the State's recommendation and Council's motion in February 2026. There were no GHL changes for the CGOA, which remains at 25 percent. As a result, total TAC is set at 30,053 mt, and TACs are 6,693 mt, 21,549 mt, and 1,811 mt for the WGOA, CGOA, and EGOA, respectively.

Steller sea lions occur in the same location as Pacific cod fisheries and are listed as endangered under the Endangered Species Act. Pacific cod are one of the predominant prey species for Steller sea lions in the GOA. Regulations implementing Steller sea lion protection measures include regulations at § 679.20(a)(12)(i) that specify, for each sector, the seasonal apportionment of Pacific cod TAC in the WGOA and CGOA.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Regional Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the best scientific information available for this fishery, the 2026 Pacific cod TACs and subsequent sector allocations and

seasonal apportionments are incorrectly specified, as they are not using the most recent data available, which is the updated Pacific cod stock assessment and OFL and ABC reviewed by the Plan Team in January 2026 and the SSC and Council in February 2026. NMFS also has determined it is necessary to adjust the Pacific cod TACs and sector allocations and seasonal apportionments to prevent harvest of the Pacific cod TACs that are incorrectly specified based on the 2024 stock assessment.

Consequently, the Regional Administrator is adjusting the 2026 GOA Pacific cod TAC to 30,053 mt. This determination is based on the most recent GOA Pacific cod stock assessment and SSC recommendations for OFL and ABC, which is the best available scientific information on biological stock status. The adjustment to TAC is reasonably related to the change in biological stock status as reflected in the most recent Pacific cod stock assessment and OFL and ABC. This determination is also based on TAC recommendations by the Council at the February 2026 meeting, and in consideration of the increase in the State GHL for the State waters fishery in the WGOA. The adjustments are necessary to ensure that the Pacific cod TACs are seasonally apportioned among sectors consistent with Steller sea lion protection measures set forth in regulation (§ 679.20(a)(12)(i)(A) and (B)).

Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2026 GOA Pacific cod TAC to 30,053 mt. Therefore, table 2 and 6 of the final 2025 and 2026 harvest specifications for groundfish in the GOA (90 FR 12468, March 18, 2025) and inseason adjustment (90 FR 60022, December 23, 2025) is revised consistent with this adjustment.

Pursuant to §§ 679.25(a)(1)(iii), 679.20(a)(6)(ii), and (a)(12)(i), table 6 of the final 2025 and 2026 harvest specifications for groundfish in the GOA (90 FR 12468, March 18, 2025) and inseason adjustment (90 FR 60022, December 23, 2025) is revised consistent with this adjustment. Note that regulations at § 679.20(a)(6)(ii) and (a)(12)(i) require NMFS to allocate TACs to gear and operational types using the sector percentages specified in regulation.

TABLE 6—FINAL 2026 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GOA; ALLOCATIONS IN THE WGOA AND CGOA SECTORS, AND THE EGOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest mt]

Sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC (%)	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC (%)	Seasonal allowances (mt)
WGOA					
Jig (2.5% of TAC)	167	n/a	100	n/a	67
Hook-and-line CV	91	0.7	46	0.7	46
Hook-and-line CP	1,292	10.9	711	8.9	581
Trawl CV	2,506	31.54	2,058	6.86	448
Trawl CP	157	0.9	59	1.5	98
All Pot CV and Pot CP	2,480	19.8	1,292	18.2	1,188
Total	6,693	63.84	4,266	36.16	2,427
CGOA					
Jig (4% of TAC)	862	n/a	517	n/a	345
Hook-and-line < 50 CV	3,021	9.31552	1,927	5.28678	1,094
Hook-and-line ≥ 50 CV	1,387	5.60935	1,160	1.09726	227
Hook-and-line CP	1,056	4.10684	850	0.99751	206
Trawl CV ¹	7,782	25.29364	5,233	16.29047	2,549
Trawl RP ¹	821	n/a	n/a	n/a	821
Trawl CP	868	2.00334	414	2.19451	454
All Pot CV and Pot CP	5,752	17.82972	3,688	9.97506	2,064
Total	21,549	64.1584	13,790	35.84	7,759
EGOA					
		Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
Total	1,811	1,630		181	

¹ Trawl catcher vessels (CVs) participating in Rockfish Program cooperatives receive 3.81 percent, or 821 mt, of the annual CGOA TAC (see table 28c to 50 CFR part 679), which is deducted from the Trawl CV B season allowance. This inseason adjustment also updates the apportionment found in table 13 of the final 2025 and 2026 harvest specifications for groundfish in the GOA (*i.e.*, Final 2026 Apportionments of Rockfish Secondary Species in the CGOA to CV and Catcher/Processor (CP) Cooperatives) (90 FR 12468, March 18, 2025) to reflect that trawl CVs participating in Rockfish Program cooperatives receive 3.81 percent of the annual CGOA TAC based on regulations at table 28c to 50 CFR part 679 (applying this percent to the revised CGOA TAC results in 821 mt).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data and information in a timely fashion and would not allow all available A season Pacific cod TAC to be harvested based on the most recent information available. NMFS was

unable to publish a notice providing time for public comment because the most recent, relevant data and information only became available as of February 5, 2026, which is the date the Council took action to recommend 2026 Pacific cod specifications following the SSC's review February 2 and the Plan Team's review January 21. This action must be effective as soon as possible, to ensure harvests of Pacific cod that are within TACs set using the best available scientific information and that are consistent with seasonal apportionments for Pacific cod that are based on regulations implementing Steller sea lion protection measures.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod in the GOA to be harvested in an expedient manner. Under

§ 679.25(c)(2), interested persons are invited to submit written comments on this action to the above **ADDRESSES** section until February 25, 2026.

There is also good cause under 5 U.S.C. 553(d)(3) to make this action effective immediately upon filing with the Office of the Federal Register. This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: February 6, 2026.

David R. Blankinship,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026-02656 Filed 2-9-26; 8:45 am]

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Proposed Rules

Federal Register

Vol. 91, No. 27

Tuesday, February 10, 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 351

RIN 3206–AO99

Reduction in Force Appeals

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to revise its regulations governing appeals of reduction-in-force (RIF) actions. OPM proposes to transfer appeal rights for employees who have been furloughed more than 30 days, separated, or demoted by a RIF action from the Merit Systems Protection Board (MSPB) to OPM. OPM expects this change will promote greater efficiency and reduce costs to agencies in effectuating RIF actions, which may be necessary in a variety of circumstances, such as to eliminate duplicative or unnecessary functions or align agency workforces with new technology, changing mission needs, or budgetary constraints.

DATES: Comments must be received on or before March 12, 2026.

ADDRESSES: You may submit comments by using the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions must include the agency name and docket number or RIN for this **Federal Register** document. Please arrange and identify your comments about the regulatory text by subpart and section number. If your comments relate to the supplementary information, please reference the heading and page number in the supplementary section. All comments must be received by the end of the comment period for them to be considered. All comments and other submissions received generally will be posted on the internet at <https://www.regulations.gov> as they are received,

without change, including any personal information provided. However, OPM retains discretion to redact personal or sensitive information, including but not limited to, personal or sensitive information pertaining to third parties.

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 www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Carol Matheis by email at employeeaccountability@opm.gov or by phone at (202) 606–2930.

SUPPLEMENTARY INFORMATION:

I. Background

The federal government's civil service system is rooted in principles of merit, fairness, and efficiency. When agencies face workforce restructuring, RIF procedures provide a mechanism for realigning staff through objective criteria. These procedures are governed by 5 U.S.C. 3501–3504 and are implemented through OPM regulations at 5 CFR 351. These regulations provide employees subject to a RIF action an avenue to appeal to the MSPB. Under 5 CFR 351.901, employees furloughed for more than 30 days, separated, or demoted by a RIF action may appeal to the MSPB.

OPM is proposing to revise its regulations governing RIFs and related technical changes under statutory authority vested in it by Congress in 5 U.S.C. 1103 and 3502. OPM is proposing these changes to more accurately reflect the governing federal statute while improving the efficiency of the RIF appeal process, which will effect more timely outcomes with less burden on agencies utilizing RIFs. This rule proposes to return the venue to hear RIF appeals from MSPB to OPM, thereby honoring congressional intent and historical practice, improving the consistency of regulatory interpretation, and streamlining the RIF process by housing it from beginning to end at OPM.

The current regulations are antiquated and no longer reflect the needs of agencies operating in the twenty-first century. The current regulatory framework has been in place for decades. During this time, the scope of RIF appeal actions has expanded beyond administrative review of a written record. As written, the regulations provided that “hearings

were to be held only when the MSPB administrative judge decided there were material issues of fact in dispute.”¹ This requirement was struck down on a collateral issue. *American Federation of Government Employees v. Office of Personnel Management*, 821 F.2d 761, 768 (D.C. Cir. 1987) (*AFGE v. OPM*). In effect, however, *AFGE v. OPM* allowed MSPB to dictate its own procedures for adjudicating RIF appeals, without any ability for OPM to modify those procedures, with the end result being MSPB permitting sweeping hearings related to RIF appeals. See *id.*, at 768–769. This dynamic has led to an unnecessarily lengthy and expensive appeals process, at considerable expense to the government and to the detriment of the appellant. OPM notes that no statutory right to an administrative or judicial review pertaining to RIF actions exists in 5 U.S.C. 3502 (though certain veterans have been granted administrative and judicial appeals rights under 5 U.S.C. 3330a, 3330b, and 38 U.S.C. chapter 43). Nor is a RIF an adverse action under 5 U.S.C. 7512. See *Schall v. Postal Service*, 73 F.3d 341, 344 (Fed. Cir. 1996). Further, there are significant qualitative differences between an adverse action separation and a RIF separation, such that they are not comparable. Employees who are subject to a RIF are given priority status for reemployment in the federal government (if separated),² the right to bump or retreat to an available position in the competitive area (if one is available and the employee is eligible by virtue of retention standing),³ and eligibility for career transition assistance and retraining,⁴ among other differences. Employees separated for misconduct under Chapter 75 or poor performance under Chapter 43 are given no similar benefits.

In passing the Civil Service Reform Act, Congress carefully created the MSPB review scheme and determined that there should be no RIF appeal right to MSPB.⁵ In the nearly 50 years since its original enactment, Congress has not amended the statute to provide for such

¹ *Reduction in Force*, 51 FR 318–01 (Jan. 3, 1986).

² See 5 CFR 351.803(a), 5 CFR part 330, subpart B.

³ See 5 CFR part 351, subpart G.

⁴ See 5 CFR 351.803(a), 5 CFR part 330, subpart B.

⁵ See 5 U.S.C. 7512.

a right, nor has it provided for an appeal process for RIFs that includes judicial review. Congress's choice not to create statutory appeal rights in 5 U.S.C. Part III, Subpart B for employees or other parties to challenge RIF actions demonstrates Congress's intention to allow the contours of any RIF appeal rights to be determined by OPM regulation.⁶ Thus, MSPB's authority to hear RIF appeals is provided for in OPM regulation (5 CFR 351.901), not statute. The MSPB acknowledged that it derived its authority to review agency RIF actions through OPM regulations. See *Kohfield v. Dept. of the Navy*, 75 M.S.P.R. 1, 4 (1997) (citing *Grubb v. Department of the Interior*, 73 M.S.P.R. 296, 299 (1997)); *Gaxiola v. U.S. Department of the Air Force*, 6 M.S.P.R. 515, 519 (1981). Under this flexibility, OPM may regulate matters such as whether to establish RIF appeal rights, the entity responsible for accepting RIF appeals, and the procedures under which an employee may appeal a RIF action.

OPM believes in the importance of RIF appeal rights for employees who have been furloughed more than 30 days, separated, or demoted by a RIF action. Such procedures have existed in OPM's regulations (and those of its predecessor agency, the Civil Service Commission [the Commission]) since the mid-twentieth century, albeit in various formulations. OPM's proposal also intends to return the focus of RIF appeals to the administrative record, with discretion provided to the presiding official to investigate or audit the RIF action. OPM believes this is a more efficient and streamlined process than is provided for under the current regulations. The current rules were initially intended "to give RIF a stronger merit basis" by, for example, linking individual performance with an employee's retention factor.⁷ While OPM agrees that individual performance should be a factor in an employee's retention standing in a RIF action, OPM does not believe that this consideration justifies housing RIF appeals at the MSPB. Indeed, individual employee performance, as reflected in an employee's rating of record, would continue to be a retention factor if RIF appeals were to be transferred to OPM, and OPM would continue to ensure that these performance-based retention factors are appropriately applied and respected in RIF actions. Further, OPM has taken numerous steps in the past several months to ensure that employee performance is measured rigorously and

fairly across the federal government, and to ensure that agencies are empowered to address poor performance.⁸ However, the procedural burdens and inefficiencies associated with MSPB appeals outweigh any symbolic tie to performance or merit basis created by requiring that such appeals be adjudicated by the MSPB.⁹

From the inception of the current regulations, "the burden and cost of defending appeals" before the MSPB have been subject to agency criticism.¹⁰ The criticisms continued throughout the 1990s. The Government Accountability Office (GAO) critiqued the process for MSPB appeals as "inefficient, expensive, and time consuming" while OPM suggested "improving the [f]ederal [g]overnment's appeals process can substantially contribute to a more effective and efficient [f]ederal [g]overnment."¹¹ OPM endorses these criticisms, particularly regarding an employee's regulatory right to a hearing in any case in which the appellant requests one, as well as the potential benefits to the Federal government. Due in part to the perceived burdens of RIF appeals, including the requirement of a hearing in any case where the appellant requests one, agencies historically have not used the authority Congress provided to agencies to execute RIFs as widely as would be expected given the size of the federal government and fast-evolving agency missions and priorities, especially when compared to the private sector.¹²

⁸ OPM Memorandum, "Performance Management for Federal Employees," June 17, 2025, available at: <https://www.opm.gov/policy-data-oversight/latest-memos/performance-management-for-federal-employees/>. This Memorandum, for example, outlines the Administration's policies of ending inflation of employee performance ratings, directing agencies to maximize the use of probationary and trial periods, and encouraging the use of both performance-based and adverse action procedures under Chapters 43 and 75.

⁹ Congress has tasked OPM with ensuring merit system principles are respected and adhered to in matters of federal employment. 5 U.S.C. 1104(b)(2).

¹⁰ U.S. Merit Sys. Prot. Bd., "Reduction in Force: The Evolving Ground Rules" (Sept. 28, 1987), pp. 5, 7, https://www.mspb.gov/studies/studies/Reduction_in_Force_The_Evolving_Ground_Rules_253680.pdf.

¹¹ Streamlining Federal Appeals Procedures: Hearings Before the Subcomm. on Civil Service of the House Comm. on Government Reform and Oversight, 104th Cong., 1st Sess. (Nov. 29, 1995).

¹² Just 2,029 employees have been subject to a RIF from 2014 to 2024, constituting an exceedingly small fraction of the federal workforce. (Source: OPM FedScope Data, Aug. 5, 2025). Meanwhile, the Bureau of Labor Statistics reports roughly that an average of over 1.7 million private sector employees have been subject to a "layoff or discharge" each month over the same 10-year span. (Source: BLS Job Openings and Layoff Turnover Survey, Aug. 28, 2025).

a. History of RIF Appeals and the CSRA Statutory Scheme

Congress has long recognized the President is inherently empowered, as part of effective management of the Executive Branch, to quickly grow and shrink the federal workforce in response to the needs of the moment. This power became more relevant when the federal government dramatically increased its employee headcount over the first half of the 20th century as Congress enacted new programs and created new agencies, coupled with the significant 1940s wartime increase at the Department of Veterans Affairs.¹³

As this rapid expansion was ongoing, presidents also recognized their inherent authority to regulate the manner by which RIFs may take place, including but not limited to by executive order, absent explicit reference to RIFs in the Pendleton Civil Service Act of 1883.¹⁴ For example, "the first uniform RIF regulations were issued in 1925 by the Personnel Classification Board," which was subsumed by the Commission.¹⁵ Those regulations were bolstered again in 1929, when President Calvin Coolidge issued Executive Order 5068, prescribing how veterans were to be treated "when reductions are being made in the force."¹⁶ President Coolidge's presupposition of his authority was affirmed by President Roosevelt, who similarly invoked presidential authority to institute the regulatory procedures by which RIFs may be executed, notwithstanding the lack of an explicit statutory grant.¹⁷

Recognizing such a dramatic and temporary increase in the workforce would necessitate empowering the President with plenary, clear, and broad authority to swiftly and agilely conduct RIFs, Congress first contemplated the modern configuration of a RIF in legislation as part of the Veterans

¹³ Rockoff, Hugh, "By Way of Analogy: The Expansion of the Federal Government in the 1930s," (Jan. 1998), <https://www.nber.org/system/files/chapters/c6891/c6891.pdf>.

¹⁴ Exec. Order No. 7915, "Amendment of Civil Service Rules," (June 24, 1938), <https://www.presidency.ucsb.edu/documents/executive-order-7915-amendment-civil-service-rules>.

¹⁵ U.S. Merit Sys. Prot. Bd., "Reduction-in-Force in the Federal Government, 1981: What Happened and Opportunities for Improvement," (June 1983), <https://babel.hathitrust.org/cgi/pt?id=uc1.31210024942615&seq=31>.

¹⁶ Exec. Order No. 5068, "Amendment of Civil Service Rule VI," (Mar. 2, 1929), <https://www.presidency.ucsb.edu/documents/executive-order-5068-amendment-civil-service-rule-vi>.

¹⁷ Exec. Order No. 6175, "Separation Ratings of Departmental Employees," (June 16, 1933), <https://www.presidency.ucsb.edu/documents/executive-order-6175-separation-ratings-departmental-employees>.

⁶ See generally 5 U.S.C. 3501–3504.

⁷ *Id.* at p. 3.

Preference Act of 1944.¹⁸ In that Act, Congress directed employees to be “released in accordance with Civil Service Commission regulations.”¹⁹ Specifically, these regulations were to be promulgated with a small number of infringements on the President’s plenary authority to effectuate a RIF. Namely Congress directed the President, when conducting a RIF, to give “due effect to tenure of employment, military preference, length of service, and efficacy ratings,” which was in turn subject to several provisos, among which was a directive that “employees whose efficiency ratings are ‘good’ or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below ‘good’ shall be retained in preference to competing nonpreference [sic.] employees who have equal or lower efficiency ratings.”²⁰ Congress, therefore, in codifying the President’s authority to execute a RIF, granted him a wide berth to manage his workforce, articulating no limiting principles in statute regarding how, and whether, RIFs were appropriate, including procedures by which an employee may appeal those decisions. Rather, Congress merely noted in its legislative history that its “purpose” in imposing those limiting principles “was to grant honorably discharged veterans ‘preference in employment where Federal funds are disbursed’ and to codify a governmental policy of extending ‘certain benefits to those who have risked their lives in the armed services during wartime.’” H. Rept. 1289 on H.R. 4115, 78th Cong. 2d sess. (1944).²¹ This configuration—establishing limiting principles for RIF processes rather than directives—has always been Congress’s approach to the RIF system, dating to Congress establishing the first retention system in 1876, which prioritized veterans of the Civil War above others when RIFs occur.²²

The Commission issued implementing regulations for the Veterans’ Preference Act that became effective on September 1, 1949.²³ The regulations provided that: “(a) Any employee notified of proposed action by

reduction in force who believes that the regulations in this part have not been correctly applied may appeal to the appropriate office of the Civil Service Commission, stating reasons for believing the proposed action to be improper, within ten days from the date he received notice of the proposed action, or within ten days after a decision by the agency on his answer to any notice giving him an opportunity to answer.”²⁴ Notably, the Commission itself directed impacted employees to file their appeal to an office under the purview of the Commissioners, not the Commission itself. Only after an office of the Commission rendered a decision was an employee permitted to appeal directly to the Commissioners.

This regulatory framework remained largely in effect until 1963, when the Commission reorganized and revised the regulations governing appeals of RIF determinations. 28 FR 10021 (Sept. 14, 1963). At this juncture, the Commission once again did not opt to delegate its authority to review RIF appeals to any other entity. Rather, the Commission’s revised regulations provided “[a]n employee who has received a notice of specific action and who believes this part has not been correctly applied may appeal to the Commission.” *Id.* at 10065.

Central to this regulatory framework was the understanding that there was no right of judicial review of Commission decisions. “Employees sought to appeal the decisions of [the Commission] through the various forms of action traditionally used for so-called nonstatutory review of agency action, including suits for mandamus . . . injunction . . . and declaratory judgment.” *United States v. Fausto*, 484 U.S. 439, 444 (1988). But “so long as there was substantial compliance with applicable procedures and statutes, the administrative determination was not reviewable.” *Hargett v. Summerfield*, 243 F.2d 29, 32 (D.C. Cir. 1957). It was long understood that RIFs “are matters peculiarly within the province of those who are in charge of and superintending the departments, and, until Congress by some special and direct legislation makes provision to the contrary, we are clear that they must be settled by those administrative officers.” *Keim v. United States*, 177 U.S. 290, 296 (1900).

In 1978, Congress enacted the Civil Service Reform Act of 1978 (CSRA). “This legislation comprehensively overhauled the civil service system.” *Lindahl v. Office of Personnel Management*, 470 U.S. 768, 773 (1985). The CSRA remains in sum and

substance the governing legislative framework today. In passing the CSRA, Congress created “an integrated scheme of administrative and judicial review, designed to balance the legitimate interests of the various categories of federal employees with the needs of sound and efficient administration.” *Grosdidier v. Broad. Bd. of Govs.*, 560 F.3d 495, 497 (D.C. Cir. 2009) (*Grosdidier*). It is both “comprehensive and exclusive.” *Id.* It is “comprehensive” in that “[i]t ‘regulates virtually every aspect of federal employment and prescribes in great detail the protections and remedies applicable to adverse personnel actions, including the availability of administrative and judicial review.’” *Nyunt v. Broad. Bd. of Govs.*, 589 F.3d 445, 448 (D.C. Cir. 2009) (internal quotations omitted). It is “exclusive,” meanwhile, in that “[i]t constitutes the remedial regime for federal employment and personnel complaints.” *Id.* Simply put, “what you get under the CSRA is what you get.” *Fornaro v. James*, 416 F.3d 63, 67 (D.C. Cir. 2005).

Indeed, the CSRA’s review scheme is exclusive even when “the CSRA provides no relief,” and in fact, “precludes other avenues of relief.” *Graham v. Ashcroft*, 358 F.3d 931, 935 (D.C. Cir. 2004). In other words, “the CSRA is the exclusive avenue for suit even if the plaintiff cannot prevail in a claim under the CSRA.” *Grosdidier*, 560 F.3d at 497. “Congress designed the CSRA’s remedial scheme with care, ‘intentionally providing—and intentionally not providing—particular forums and procedures for particular kinds of claims.’” *Id.* (quoting *Filebark v. Dep’t of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009)). The comprehensive statutory review scheme created by the CSRA means that “federal employees may not use the Administrative Procedure Act [APA] to challenge agency employment actions.” *Filebark*, 555 F.3d at 1010.

The CSRA prescribes in precise detail the types of actions regarding which there is eventual judicial review—and it does not provide for such review of RIFs.²⁵ Under the CSRA, “[t]he reviewable agency actions are removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less,” including when there may be constitutional claims at issue and, even then, only through the proper channels. *Elgin v. Dep’t of Treasury*, 5 U.S. 1, 5–6 (2012). Courts

¹⁸ U.S. Merit Sys. Prot. Bd., *supra* note 15.

¹⁹ 5 U.S.C. 861 (Jun. 27, 1944), ch. 287, sec. 12, 58 Stat. 390.

²⁰ 5 U.S.C. 861 (Jun. 27, 1944), ch. 287, sec. 12, 58 Stat. 390.

²¹ U.S. Senate Committee on Post Office and Civil Service, “Reduction-in-Force System in the Federal Government,” (July 4, 1952), p. 61, <https://babel.hathitrust.org/cgi/pt?id=uc1.aa0005567177&seq=67&q1=rule>.

²² U.S. Merit Sys. Prot. Bd., *supra* note 15, at p. 17.

²³ U.S. Senate Committee on Post Office and Civil Service, *supra* note 21, at p. 68.

²⁴ *Id.* at 89.

²⁵ Congress did subsequently provide for career members of the Senior Executive Service (SES) to file RIF appeals to the MSPB but chose not to provide similar appeal rights from RIFs for other members of the civil service. 5 U.S.C. 3595(c).

have repeatedly dismissed a litany of other actions brought outside the proper CSRA channels (such as under the APA) by individuals regarding their employment under the comprehensive statutory scheme provided for in the CSRA. *See, e.g., United States v. Fausto*, 484 U.S. 439 (1988) (“the absence of provision for . . . employees to obtain judicial review is not an uninformative consequence of the limited scope of the statute, but rather manifestation of a considered congressional judgment. . . . This conclusion emerges not only from the statutory language, but also from what we have elsewhere found to be an indicator of nonreviewability, the structure of the statutory scheme”); *Bush v. Lucas*, 462 U.S. 367, 368 (1983) (holding “that it would be inappropriate . . . to supplement [the CSRA] regulatory scheme with a new judicial remedy”); *Zummer v. Sallet*, 37 F.4th 996 (5th Cir. 2022) (holding the CSRA prohibits district courts from hearing claims seeking to reverse suspensions and terminations); *Krafsur v. Davenport*, 736 F.3d 1032, 1034 (6th Cir. 2013) (“The [CSRA] spells out in painstaking detail the path an employee must follow if he wants to challenge a prohibited personnel practice”); *Dotson v. Griesa*, 398 F.3d 156, 163 (2nd Cir. 2005) (“the CSRA creates an integrated scheme of administrative and judicial review for adverse employment actions That scheme . . . affords no administrative or judicial review to judicial branch employees”) (internal quotation marks omitted); *Pathak v. Dep’t of Veterans Aff.*, 274 F.3d 28 (1st Cir. 2001) (holding the CSRA stripped the district court of subject matter jurisdiction to consider a suspension of less than 14 days); *Ryon v. O’Neill*, 894 F.2d 199, 204 (6th Cir. 1990) (“In short, the text of the CSRA, the structure of the review it establishes, and the legislative history of the Act, all lead ineludibly to the conclusion that Congress intended review of agency reassignment decisions to be confined to the specific procedures set out in the text of the CSRA”); *Yokum v. U.S. Postal Serv.*, 877 F.2d 276 (4th Cir. 1989) (holding the CSRA “precludes judicial review of administrative personnel decisions adverse to the interests of nonpreference eligible postal workers”) (internal quotations omitted). This is because “CSRA nowhere grants any employee, whether in the excepted or competitive service, the right to bring an action in federal district court.” *Galvin v. F.D.I.C.*, 48 F.3d 531 (5th Cir. 1995) (holding plaintiff’s claim was properly dismissed by the federal district court because his “claims arise out of his employment relationship with

the United States, and CSRA provides the exclusive mode of redress.”).

What is given by the comprehensive statutory scheme in the way of RIF procedures are codified at 5 U.S.C. 3501–3504, which Congress directs OPM to implement by regulation. While those statutes technically predate the CSRA’s enactment in 1978, it has long been recognized that the statutes and regulations regarding reductions-in-force in the federal government are part of the “comprehensive employment scheme” created by the CSRA, *Filebark v. U.S. Dep’t of Transp.*, 555 F.3d 1009, 1010 (D.C. Cir. 2009), which “regulates virtually every aspect of federal employment.” *Nyunt v. Chairman, Broad. Bd. of Governors*, 589 F.3d 445, 448 (D.C. Cir. 2009); *see also Nat’l Treasury Emps. Union v. Vought*, 149 F.4th 762, 774–75 (D.C. Cir. 2025) (applying CSRA claims-channeling in lawsuit challenging, inter alia, reductions-in-force); *Nat’l Treasury Emps. Union v. Trump*, 770 F. Supp. 3d 1, 11 (D.D.C. 2025) (same); *Gober v. Collins*, No. CV 25–714 (RC), 2025 WL 1360434, at *6 (D.D.C. May 8, 2025) (same). The CSRA applies to preclude judicial review even where it provides no specific avenue for relief. *See Filebark v. U.S. Dep’t of Transp.*, 542 F. Supp. 2d 1, 8 (D.D.C. 2008) (“Where Congress wanted to guarantee certain remedies, it explicitly did so.”); *aff’d sub nom. Filebark v. U.S. Dep’t of Transp.*, 555 F.3d 1009 (D.C. Cir. 2009). While RIF separations can result in job loss or reassignment, they are specifically excluded as adverse actions under chapter 75 of Title 5, U.S.C., which governs removals and discipline for misconduct and, in some cases, performance deficiencies. As a result, an employee impacted by a RIF may be so affected through no fault of his or her own because “when reductions of force are justified, they must be made.”²⁶

As outlined above, employees whose positions are subject to a RIF, however, have been afforded the right to appeal under 5 U.S.C. Chapter 77 only since 1983. Pursuant to Section 205 of CSRA, which amended 5 U.S.C. 7701(a), MSPB is granted jurisdiction over certain personnel actions “appealable to the Board under any law, rule, or regulation.” This jurisdictional grant permits, but does not require, MSPB to review appeals of actions conducted pursuant to 5 U.S.C. 3501–3504, which

as explained below was granted to MSPB by regulatory action of OPM. While 5 U.S.C. 7512(b) excludes RIF actions from MSPB review under 5 U.S.C. Chapter 75 and its implementing regulations, it does not preclude MSPB review of RIF actions entirely. Authority under Chapter 75 applies exclusively to adverse actions. 5 U.S.C. 7512. “A RIF is an administrative procedure by which agencies eliminate jobs and account for employees who occupied abolished positions. It is not an adverse action against a particular employee, but it is directed solely at a position within an agency.” *Huber v. Merit Systems Protection Bd.*, 793 F.2d 284, 286 (Fed. Cir. 1986). “Unlike adverse actions, RIFs are not aimed at removing particular individuals; rather they are directed solely at positions.” *Grier v. Dep’t of Health and Human Services*, 750 F.2d 944, 945 (Fed. Cir. 1984). MSPB concurs, noting the Board’s authority “is not plenary,” but rather “the scope of the Board’s jurisdiction to review an agency’s RIF actions [are] under OPM’s regulations at 5 CFR part 351,” which do not implement Chapter 75. *Adams v. Dep’t of Defense*, 96 M.S.P.R. 325, 329 (2004). Further, OPM specifically delegated the authority—explicitly pursuant to 5 U.S.C. 1302 and 3502—to review a RIF appeal to MSPB in 1983. 48 FR 49462 (Oct. 25, 1983). Therefore, MSPB’s jurisdiction over RIF appeals is regulatory in nature, not statutory. It is subordinated to and contingent upon OPM’s decision, or not, to delegate its authority to hear RIF appeals. MSPB’s jurisdiction over RIF appeals thus developed by custom, rather than statutory command, which MSPB itself acknowledges. *See Kohfield v. Dept. Of the Navy*, 75 M.S.P.R. 1, 4 (1997) (“Neither [the CSRA] nor any other statutory provision provides for a right of [MSPB] appeal for a RIF action.”).

Absent explicit statutory directive, it cannot be presupposed Congress’s intention was for MSPB to be the proper venue to hear RIF appeals for non-SES employees.²⁷ Moreover, when interpreting statutes such as CSRA which comprehensively overhaul a regulatory framework, special consideration must be given to the explicit wording of the statute—above and beyond typical adherence to the letter of the law—because “Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does

²⁶ President Calvin Coolidge, “Address at the Twelfth Regular Business Meeting of the Business Organization of the Government, Washington, DC,” (Jan. 29, 1927), <https://www.presidency.ucsb.edu/documents/address-the-twelfth-regular-meeting-the-business-organization-the-government-washington-dc>.

²⁷ The fact that Congress did subsequently provide for RIF appeals to the MSPB for members of the SES (whose RIF procedures are different from those of other title 5 employees, see 5 CFR part 359) underscores that Congress made no similar determination regarding non-SES employees.

not, one might say, hide elephants in mouseholes.” *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457, 468 (2001). Were Congress interested in reversing the long-established precedent of near-plenary executive authority to execute a RIF action, it could have legislated matters in the CSRA such as RIF appeal rights, the entity responsible for accepting those appeals, the procedures by which an employee or employees may appeal a RIF action, as well as whether those appeal determinations were subject to judicial review. This is especially true given “[c]riticism of this ‘system’ of administrative and judicial review [of agencies’ personnel actions prior to CSRA] was widespread.” *United States v. Fausto*, 484 U.S. 439, 445 (1988). However, Congress in legislating CSRA remained both implicitly and explicitly silent on RIF appeals in the face of widespread criticism. See 5 U.S.C. 3501–3504. Interpreting Congress’s desire to house RIF appeals at OPM instead of MSPB is best understood by reading the text of the CSRA itself. When interpreting legislative direction, in all contexts, including but not limited to the CSRA, the statute itself is the first and best source to which to refer when determining the best reading of a statute. As a general matter, “Congress wrote the statute it wrote,” and “[t]hat congressional election settles” questions of interpretation. See *CSX Transp., Inc. v. Alabama Dept. of Revenue*, 562 U.S. 277, 296 (2011). In this light, the best reading of the statute’s absence of an explicit directive is that Congress intended for the President, through OPM, to retain maximum flexibility to determine the procedures under which a RIF is to be carried out, including which entity is best positioned to serve as the venue for RIF appeals.

b. The Current, Cumbersome RIF Appeal Procedures Hurt the Federal Government

Since before the promulgation of the modern RIF procedures in the 1980s, agencies have expressed concerns the procedures would render agencies unable to utilize RIFs effectively. In evaluating agency response to designating MSPB as the venue for RIF appeals, the MSPB found agencies were concerned with the increased administrative burden imposed upon them, as well as the significant weight the process placed on individual employees’ performance plans and appraisals.²⁸

These concerns ultimately became more than theoretical. In 1995, OPM,

the Government Accountability Office (GAO), the National Academy of Public Administration (NAPA), MSPB personnel, as well as the former MSPB Chairman, were called to testify in front of the Subcommittee on the Civil Service of the Committee on Government Reform and Oversight of the House of Representatives regarding federal employee appellate procedures, including to MSPB. At the time, MSPB was experiencing a dramatic increase in RIF appeals, seeing a 252% increase from Fiscal Year (FY) 1994 to FY 1995.²⁹ All witnesses criticized MSPB policies to varying degrees—even the then-current and former MSPB personnel—for unnecessarily increasing inefficiencies and undermining effectiveness. OPM noted that many MSPB appeals “concern straightforward provisions of law with which an appellant disagrees,” but that “under current rules a person also has a right to a hearing at MSPB, and we believe there may be room for streamlining in this particular area.”³⁰ OPM also noted its “central role in intervening in appeals to ensure that its regulations are properly interpreted and that the meaning and intent of the civil service laws enacted by Congress are adhered to,” a “special role” reserved for OPM.³¹ GAO raised more pointed concerns, suggesting a number of considerations “detract[ing] from the fair and efficient operation of the federal government,” including that “because of the complexity of the system [of appeals] and the variety of redress mechanisms it affords federal employees, it is inefficient, expensive, and time consuming.”³² GAO also noted the system “is vulnerable to employees who would take undue advantage of these protections [by drawing out] protracted processes and requirements.”³³ GAO’s chosen remedy was for the federal government to mirror remedies available “in the private sector and elsewhere,” suggesting they “may be worth further study.”³⁴ NAPA provided testimony detailing work it had previously conducted on employee appeals the conclusions of which included the following issues in need of resolution: “jurisdictional overlap,” “timely, fair, and final decisions,” inconsistent remedies, and a “focus on non-substantive issues.”³⁵ The Chairman of

the MSPB testified that upon review, MSPB was undermining its own effectiveness as a venue for appeals because “we have found that the existing policies are sound but are being poorly implemented or are not being implemented at all.”³⁶ He continued by noting MSPB is “like a court. We receive whatever complaints are going to be generated and come to us. But we, I believe, as a government, can be most efficient and a better utilizer of resources . . . Hopefully, [complaints] never come to us.”³⁷ The former Chairman of the MSPB expressed confusion as to the excessive complication in the process, stating “I think it would be one thing to require a public law scheme as complicated as this if you are dealing with areas that really require this kind of complication. In fact, the only field of law that comes to mind . . . in terms of parallel [levels of complication] would be the Tax Code and tax law.”³⁸ Ultimately, as the former MSPB Chairman noted, “it is clear, and I believe it is clear both to those who work within the system and would be patently clear to those who just view it from the outside, [MSPB procedures are] far too complicated and real obtuse for real people in real workplaces to have to deal with.”³⁹

No authority has substantively addressed these concerns, predicted in 1987 and affirmed in 1995, resulting in limitations on agencies’ practical ability to exercise RIF authority. Across the vast majority of government from FY 2005 through FY 2024, only 10,614 employees have been subject to a RIF.⁴⁰ More recently, under President Trump, agencies prepared RIF and reorganization plans pursuant to Executive Order 14210, *Implementing the President’s “Department of Government Efficiency” Workforce Optimization Initiative* (Feb. 11, 2025) (directing agencies, *inter alia*, to “promptly undertake preparations to initiate large-scale reductions in force (RIFs), consistent with applicable law”). In addition, RIFs were undertaken pursuant to Executive Order 14242, *Improving Education Outcomes by Empowering Parents, States, and Communities* (March 25, 2025) (directing the Secretary of Education to “to the maximum extent appropriate and permitted by law, take all necessary steps to facilitate the closure of the Department of Education”); Executive Order 14217, *Commencing the*

²⁹ Subcomm. on Civil Service of the House Comm. on Government Reform and Oversight, *supra* note 11.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ OPM FedScope data, Aug. 5, 2025.

²⁸ U.S. Merit Sys. Prot. Bd., *supra* note 10.

Reduction of the Federal Bureaucracy (February 25, 2025) (directing that several government entities “be eliminated to the maximum extent consistent with applicable law”); and Executive Order 14238, *Continuing the Reduction of the Federal Bureaucracy* (March 14, 2025) (same, except as to a different set of government entities). Although in 2025 the Trump Administration oversaw the largest peacetime reduction in the size of the Federal workforce ever, some 317,000 employees, the overwhelming majority of these departures (over 92.5%) were due to voluntary programs like the Deferred Resignation Program, Voluntary Early Retirement Authority, Voluntary Separation Incentive Payments, and other voluntary resignations. Only a very small percentage of departures resulted from RIFs.

While at least some of the historical causes of these relatively low numbers of employees subject to a RIF have been lack of political will and the success of RIF avoidance measures, the relatively low numbers across time support a widespread perception that, due to the time-consuming RIF appeal process, RIF procedures are too burdensome and arduous to be effective. For example, one author (an experienced former Federal employee and consultant for Federal agencies) called the current OPM RIF regulations “the ultimate bureaucratic poison pill: take it, and you die. Meaning, the RIF rules and regulations are so complex and cumbersome, the process so time-consuming and demoralizing, and the outcome so haphazard and invariably negative, that it’s the absolute last option any sane organization would want to consider.”⁴¹

The current dual-track structure, whereby OPM promulgates and interprets RIF regulations while MSPB adjudicates appeals, creates considerable detrimental impact for both employees and agencies and renders the RIF procedures inefficient. In addition, the MSPB lacks institutional expertise regarding RIFs compared to OPM. For example, MSPB requires an inflexible, formal, quasi-judicial process that requires a hearing at the appellant’s request, adding minimal benefits while exacerbating the already-extensive adjudicative timeline, despite authority to streamline the process to the benefit of appellant and agency. See 5 U.S.C. 7701(b). Specifically, RIF appeals filed before

MSPB typically require a hearing and searching discovery. See 5 U.S.C. 7701(a); 5 CFR 1201.71–1201.75. The decision to provide for such process, and in so doing depriving employees and agencies of the ability to adjudicate RIF appeals efficiently, is increasingly untenable in light of MSPB’s extensive delays. MSPB has recognized the problem its recurring backlog of cases presents, as well as the cause: lack of quorum because the Senate has not confirmed a sufficient number of Board members. In recent years, MSPB has at various times lacked quorum for extended periods, including for five years between 2017 and 2022.⁴² The risk of an additional backlog is also significant in light of the significantly increased number of cases received in calendar year 2025.⁴³

Agencies similarly stand to benefit from a less burdensome process that addresses the historical concerns OPM now embraces. Further, the current rules are undermining Congress’s broad authorization for RIFs by limiting agencies’ ability to fully exercise the authority it provided. As stated above, Congress did not design the CSRA to require, nor did it intend for it to require, agencies to litigate matters touching on their decisions to conduct RIFs before the MSPB in a quasi-judicial hearing format. Ultimately, the status quo appeal process is no longer conducive to serve the needs of twenty-first century governance. Both agencies and employees would be far better served by a single, streamlined process spanning the full lifecycle of the RIF process and leveraging OPM’s expertise throughout, rather than the fragmented process this rule proposes to replace. This will promote consistency, efficiency, and regularity of decision-making regarding RIF appeals.

As such, OPM believes it would be prudent and provide much needed clarity for employees and agencies alike to be able to leverage OPM’s expertise with RIF actions, as well as its ability to efficiently adjudicate them, especially when contrasted with MSPB’s lack thereof on both counts. “The administrative process will be best vindicated by clarity in its exercise.” *Phelps Dodge Corp. v. Nat’l Labor Relations Board*, 313 U.S. 177, 197

⁴² 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.

⁴³ U.S. Merit Sys. Prot. Bd., “Weekly Number of Cases Received in the Regional and Field Offices Fiscal Year 2025” (Sept. 29, 2025), <https://www.mspb.gov/Recent%20ROFO%20Case%20Receipts.pdf>.

(1941). As noted elsewhere in this proposal, OPM has considerable historical expertise with the RIF process. The CSRA tasked OPM with managing the RIF process. See 5 U.S.C. 3501–3504. OPM also promulgated the regulations governing the RIF process. See 5 CFR part 351.⁴⁴ It also issues handbooks with guidance to provide assistance to agencies “that are considering and/or undergoing some type of reshaping (e.g., . . . reduction in force).”⁴⁵ According to the Administrative Conference of the United States (ACUS), “a situation in which agencies share closely related responsibilities for different aspects of a larger regulatory, programmatic, or management enterprise . . . produce[s] redundancy, inefficiency, and gaps, but they also create underappreciated challenges.”⁴⁶ GAO concurs with ACUS in the obvious: eliminating fragmentation “improv[es] the efficiency and effectiveness” of operations.⁴⁷ Streamlining responsibilities will “improv[e] the efficiency, effectiveness, and accountability” regarding “potential dysfunctions created by the shared regulatory space.”⁴⁸ Improving processes in this way can also “reduce costs for both the government and regulated entities,” including employees filing RIF appeals.⁴⁹

As a practical matter, OPM believes reducing that fragmentation by tasking MSAC with adjudication of RIF appeals will provide much needed clarity and efficiency. MSAC is not only equipped, but best positioned, to handle this task. MSAC is an external-facing organization within OPM with longstanding oversight and adjudicative functions. As a general matter, “MSAC is responsible for ensuring that [f]ederal agency human resources programs are effective and

⁴⁴ OPM plans to propose changes to the regulations governing the administration of a reduction in force in a separate rulemaking. See RIN 3206–AO86. That rulemaking will affect different subparts of part 351.

⁴⁵ Workforce Reshaping Operations Handbook: A Guide for Agency Management and Human Resources Offices, OPM, March 2017, https://www.opm.gov/policy-data-oversight/workforce-restructuring/reductions-in-force-rif/workforce_reshaping.pdf.

⁴⁶ Administrative Conference of the United States, “Improving Coordination of Related Agency Responsibilities,” (June 15, 2012), <https://www.acus.gov/document/improving-coordination-related-agency-responsibilities>.

⁴⁷ Government Accountability Office, “Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve an Additional One Hundred Billion Dollars or More in Future Financial Benefits,” GAO–25–107604, (May 13, 2025), <https://www.gao.gov/assets/gao-25-107604.pdf>.

⁴⁸ Administrative Conference of the United States, *supra* note 46.

⁴⁹ *Id.*

⁴¹ Fred Mills, *Civil Disservice: Federal Employment Culture and the Challenge of Genuine Reform*, at p.42 (iUniverse 2010).

efficient and comply with merit system principles and related civil service regulations,”⁵⁰ which includes oversight of agency RIF actions. Specifically, MSAC also has “a long history of adjudicating federal employee classification appeals, as well as Fair Labor Standards Act (FLSA), compensation and leave, and declination of reasonable offer claims”⁵¹ MSAC “offer[s] federal employees an independent review of agency personnel decisions. OPM’s decision in these cases is the final administrative decision.”⁵² As part of those functions, MSAC provides employees with administrative procedural rights to challenge agency determinations without having to seek redress in federal court. Further, the appeals process set forth in this proposed rule is exceedingly similar to OPM’s classification appeals and FLSA claims process at 5 CFR part 511 subpart F, and 5 CFR part 551 subpart G, respectively. Thus, OPM will adjudicate RIF appeals in much the same manner as it does these claims, allowing it to leverage its procedural institutional knowledge. Additionally, distinct from MSPB, it has the infrastructure in place to adjudicate RIF appeals effectively without being subject to restrictions arising from the lack of a quorum.

Housing RIF appeals within MSAC (OPM’s oversight and adjudicative body) would additionally separate the RIF adjudicative function within OPM from OPM’s RIF policymaking function, which is housed in its Workforce Policy & Innovation (WPI) office.⁵³ OPM would continue to maintain appropriate administrative separation between its policy arm (WPI) and adjudication arm (MSAC).

Meanwhile, MSPB has been considerably backlogged due to a protracted period without a quorum that leaves employees and agencies in limbo. Between January 7, 2017, and March 3, 2022, and between April 10 and October 27, 2025, MSPB lacked a quorum, which prevented it from reviewing cases and

resulted in a considerable backlog.⁵⁴ In light of the Senate’s failure to confirm nominees to the MSPB in a timely way, a process over which the executive branch lacks any meaningful control, prudent governance requires the executive to minimize disruption in personnel operations caused by loss of a quorum at MSPB. MSPB too has mitigated, as far as practicable, the effects of a future lack of quorum on delays. 89 FR 72957 (Sept. 9, 2024). However, this lack of faith in its own ability to timely adjudicate appeals provides additional evidence of the prudence of relocating RIF appeals to MSAC. While employees may lack some procedural mechanisms if appeals are transferred to MSAC as contemplated by 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.

As noted above, under the CSRA, Congress intended the President, by and through agencies, to be able to invoke RIF action authorities absent additional congressional action. It also directed OPM to continue to regulate and manage the RIF action lifecycle, as the Commission and the Personnel Classification Board before it had done; Congress entrusted OPM to continue doing so as part of the CSRA. *See* 5 U.S.C. 1302 and 3502. Outsourcing the appeal process to MSPB subjects the viability of the process (from notice through to appeal) to the machinations of MSPB, which cannot be relied upon to have a functioning quorum at all times. Nowhere has Congress directed OPM to involve MSPB in the RIF process, much less subordinate an agency’s ability to engage in and conclude a RIF action to MSPB involvement. *See* Public Law 95–454, 92 Stat. 1111, as amended.

In furtherance of addressing these concerns, OPM proposes to establish limited grounds for employees subject to a RIF action to appeal their designation. Under these proposed regulations, such employees will be able to challenge their designation based on an agency’s improper execution of a RIF action resulting in their being subject to a RIF. Employees wishing to pursue collateral claims under statutes administered by other entities, like bringing a claim of discrimination to the EEOC, would continue to have those

avenues of appeal, but would not be allowed to raise those claims with OPM. These limited grounds of appeal reflect the historical principles and precedents that the President has plenary power to determine if a RIF is necessary and proper, subject to the provisos informing retention preferences directed by Congress. These limited grounds of appeal will ensure agencies adhere to the Merit System Principles and allow OPM to correct agency actions taken contrary to these principles, consistent with OPM’s direct statutory and presidentially delegated authority. *See* 5 U.S.C. 1103(a)(7) and (c)(2)(f), 1104(b)(2); *see also* 5 CFR 5.3, 10.2–10.3.

II. Proposed Amendments

OPM is proposing to amend its regulations at subpart I of part 351, governing appeals of and corrective action with respect to RIFs.

Section 351.901 currently provides: “An employee who has been furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board.” OPM is proposing to revise § 351.901 to specify that an employee who has been furloughed for more than 30 days, separated, or demoted as a result of a RIF may appeal exclusively to OPM. The proposed revision also places the burden of proving, by a preponderance of the evidence, the timeliness and proper venue for the appeal on the employee. The rule would provide that the employee, also by preponderance of the evidence, has the burden of proving that the RIF action subject to appeal was conducted inconsistent with either statute or OPM regulations such that the employee would not have suffered the same or another RIF action if properly conducted. Further, to avoid duplication and ensure that RIF appeals may be decided expeditiously, and consistent with Congress’s intent that the administrative remedies under the CSRA be exclusive, OPM clarifies that the OPM appeal process would be the sole and exclusive means, including through filing of a grievance, to challenge a RIF action, though matters otherwise within the jurisdiction of the EEOC, Federal Labor Relations Authority (FLRA), an Inspector General, the MSPB, the Department of Labor Veterans’ Employment and Training Service, or the Office of Special Counsel (OSC) may proceed through those administrative channels. Finally, OPM is foreclosing judicial review of decisions it issues stemming from an appeal under this part.

⁵⁰ U.S. Off. of Personnel Management Off. of the Inspector General, “Final Evaluation Report: Evaluation of the Merit System Accountability and Compliance Office,” Rept. No. 2021–OEI–011 (Dec. 12, 2022), available at <https://www.oversight.gov/sites/default/files/documents/reports/2022-12/Final-Report-2021-OEI-001.pdf>.

⁵¹ *See* U.S. Off. of Personnel Management, Adjudications, <https://www.opm.gov/compliance/adjudications/>.

⁵² *Id.*

⁵³ *See* U.S. Off. of Personnel Management, FY 2026 Congressional Budget Justification and Annual Performance Plan at p. 26, available at <https://www.opm.gov/about-us/fy-2026-congressional-budget-justification/fy-2026-congressional-budget-justification.pdf>.

⁵⁴ U.S. Merit Sys. Prot. Bd., *Frequently Asked Questions About the Lack of Quorum Period and Restoration of the Full Board* (Nov. 14, 2025), available at <https://www.mspb.gov/FAQs%20Absence%20of%20Board%20Quorum%2011-14-25.pdf>.

OPM understands the phrase “sole and exclusive means of appealing” in proposed § 351.901 to create an outer bound outside which an agency will be precluded from providing for or otherwise authorizing any process not contemplated, in whole or in part, by this rule. Thus, as provided in the rule, these procedures “supersede any conflicting appeal procedures found in agency policies or collective bargaining agreements.” This language is intended to preclude appeals filed pursuant to internal agency policies or collective bargaining agreements, whether filed by individual employees or by unions on behalf of their members. The Federal Service Labor Management Relations Statute (the FSLMRS, enacted as part of the CSRA) provides that “the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.” 5 U.S.C. 7117(a)(1). This would be such a government-wide rule. It is proposed to apply to any agency executing a RIF action. To that end, it would firmly and completely limit the flexibility of agencies to provide processes not contemplated by this rule, including grievance arbitration. See *U.S. Dep’t of Treasury, I.R.S. v. FLRA*, 996 F.2d 1246, 1250 (D.C. Cir. 1993) (5 U.S.C. 7117(a)(1) “permits the government to pull a subject out of the bargaining process by issuing a government-wide rule that creates a regime inconsistent with bargaining,” including where a regulation “sets out an exclusive method of resolving any claims”).

In this rulemaking, OPM is foreclosing grievance arbitration regarding RIFs because it is to the benefit of agencies and employees alike. Agencies benefit from avoiding a protracted process that adds time and expense to conducting a RIF action and undercuts the agency head’s ability to manage his or her workforce. In addition, in precluding grievance over RIF appeals, OPM is allowing each employee affected by a RIF to appeal to OPM as part of a streamlined and fair process. Further, both agencies and employees benefit both from finality of process and from availing themselves of competent adjudicators of the dispute in question.

While, for the reasons discussed above, agencies stand to benefit from the procedure OPM is proposing in this rule relative to the status quo, agencies also will directly benefit from precluding grievance arbitration. First, grievance arbitration under the FSLMRS is an

unnecessarily protracted process, leaving uncertainty lingering over agencies for significant periods of time. Even after a hearing is held, the losing party can appeal to the FLRA, which reports the average age of its arbitration cases in FY2024 to be 307 days.⁵⁵ This is an untenable length of time to require an agency head to wait to finalize a RIF—and for an employee to wait to obtain a resolution to a RIF-related grievance. Indeed, commentators have observed that “the FLRA process seems all too frequently to have become the Russian Roulette of federal sector arbitration. At the time a case is heard, when an award is rendered, or even years later, one or both of the parties often has its finger on the trigger ready to discharge every chamber in order to delay and frustrate the dispute resolution process or to strike down an award.”⁵⁶

Second, concerns exist that grievance arbitrators lack subject matter expertise necessary to properly adjudicate federal sector labor-management arbitration. “Federal sector labor management practitioners have long expressed concerns about arbitrator quality and competence.”⁵⁷ Neither agencies nor employees should be left with any doubt whatsoever that the grievance arbitrator understands the law he or she is applying. However, too often, that doubt not only persists, but is warranted. Between February 2019 and July 2023, nearly half (40.2 percent) of appeals of arbitrator decisions—which may only be appealed on exceedingly narrow grounds, like incorrect facts or an arbitrator exceeding his or her authority—were either overturned or remanded to the arbitrator for further consideration.⁵⁸ “By far the most common basis for overturning arbitral awards over this period was that the arbitrator’s ruling was, in whole or in part, contrary to law, rule or regulation. Almost two-thirds of the overturned awards were voided on that basis. The next most common ground—accounting for almost one-quarter of overturned

awards—was that the award did not draw its essence from the parties’ CBA.”⁵⁹ In 2018, the Federal Mediation and Conciliation Service’s Director of Arbitration identified a “serious concern” noted by “parties on both sides at federal agencies,” namely “that they are receiving panels where one or more arbitrator appears to lack any meaningful experience in federal sector labor-management issues.”⁶⁰ It should not be too much to ask (and OPM’s proposal ensures) that no party to a RIF appeal would have to “deal with Arbors [arbitrators] who are assigned ad hoc and may be relatively clueless re the fed sector.”⁶¹

Third, there are serious concerns that grievance arbitration in the federal sector is itself unconstitutional. Federal-sector arbitrators exercise substantial power, and their decisions are only subject to review by the FLRA under an extraordinarily deferential standard.⁶² At the same time, these arbitrators are private citizens who are not accountable to or appointed by the President or any principal officer. Although no court has directly weighed in on these issues, this framework is in considerable tension with private nondelegation doctrine caselaw on the scope of constitutionally permissible delegations of authority to private parties.⁶³ It is not clear that private citizens can issue orders binding the executive branch with minimal review by Federal officers. Transferring adjudication of RIFs from grievance arbitrators to OPM would vitiate these constitutional concerns.

In place of the protracted, fragmented process of grievance arbitration regarding RIFs, including unaccountable grievance arbitrators who often lack appropriate federal-sector experience, OPM proposes a streamlined, one-stop process, overseen by a principal officer (the OPM Director) directly accountable to the President. OPM expects that

⁵⁹ *Id.*

⁶⁰ Sherk & Sagert, *supra* note 57.

⁶¹ *Id.*

⁶² See *Nat’l Weather Serv. Emps. Org. v. FLRA*, 966 F.3d 875, 881 (D.C. Cir. 2020) (as “long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the Authority may not reverse the arbitrator’s award even if it is convinced he committed serious error”).

⁶³ See, e.g., *Alpine Securities Corp. v. Financial Industry Regulatory Authority*, 121 F.4th 1314, 1325 (D.C. Cir. 2024) (“For a delegation of governmental authority to a private entity to be constitutional, the private entity must act only as an aid to an accountable government agency that retains the ultimate authority to approve, disapprove, or modify the private entity’s actions and decisions”) (cleaned up). See also *Federal Communications Commission v. Consumers’ Research*, 145 S. Ct. 2428, 2508 (2025) (delegations of authority to private parties are permissible only “[a]s long as an agency [] retains decision-making power”).

⁵⁵ U.S. Fed. Lab. Rels. Auth., “Performance & Accountability Report Fiscal Year 2024,” (2024) available at <https://www.flra.gov/system/files/webfm/FLRA%20Agency-wide/Public%20Affairs/PAR/FLRA%20FY2024%20PAR.pdf>.

⁵⁶ Dr. Mollie H. Bowers, “Challenges to Arbitrability in Federal Sector Grievance Cases,” 5 Hofstra U. Lab. & Emp. L.J. 169, 175 (1988).

⁵⁷ James Sherk & Jacob Sagert, “Grievance Arbitrators Lack Federal Sector Experience,” (June 24, 2024), <https://www.americafirstpolicy.com/issues/grievance-arbitrators-lack-federal-sector-experience>.

⁵⁸ James Sherk, “Federal Union Arbitrators Frequently Misapply the Law,” (Aug. 2, 2023), <https://www.americafirstpolicy.com/issues/expert-insight-federal-union-arbitrators-frequently-misapply-the-law>.

similar efficiencies can be gained by allowing for the RIF appeal process in this part to supersede any overlapping agency appeal processes, whether or not they were negotiated as part of the collective bargaining process.

This proposed section leaves the full array of CSRA statutory remedies for ancillary issues available to an employee subject to a RIF. For example, this proposal allows for an employee who believes he or she has been unfairly targeted for political purposes to file a complaint to that effect with the OSC. As noted above, the CSRA provides for these pathways in statute, and this proposal does nothing to restrict or redirect these claims.

Proposed § 351.902 describes the procedures and timeline an employee must adhere to when submitting an appeal.⁶⁴ It provides that all appeals must be filed using an e-filing system and that, unless the party demonstrates good cause and seeks approval from OPM, OPM will not accept documents via postal mail or electronic mail. Either the employee or the employee's authorized representative may file the appeal. OPM anticipates that it would have an e-filing system in place prior to the effective date of a final rule. It also implements a timetable an employee must abide by to ensure the appeal will not be deemed untimely and dismissed (subject to the employee demonstrating good cause for an untimely appeal, as determined by OPM, in which case the timetable may be waived). The timetable requires the employee to submit a RIF appeal to OPM prior to 11:59 p.m. Eastern Time on the 30th calendar day after the effective date of the action. However, if the 30th day falls on a Saturday, Sunday, or Federal holiday, the filing period would be extended to include the first weekday after that date. It also proposes to provide e-filing procedures necessary to file appeals.

Proposed § 351.903 describes the content of a RIF appeal, the employing agency's response to that appeal, and an employee's reply if warranted, grants the employee or the employee's representative, by request, the ability to inspect OPM's appellate records, and requires the appellant and agency to serve all information submitted to OPM on one another, at the same time as such documents are submitted to OPM.

Proposed § 351.904 describes who an employee may select to be his or her representative and the circumstances under which the agency may disallow the representative to represent the

employee. This section proposes to permit the employee to select any person with whom the employee has a written agreement for the representative to act as such related to the specific appeal being filed. If the employee is incapacitated, this section proposes to permit the designated individual exercising the durable power of attorney on the employee's behalf or, in the alternative, the employee's surrogate decisionmaker, to act as a stand-in for the employee. However, this section proposes an agency be authorized to, at the agency's discretion, reject any representative who is an employee of the agency when his or her actions as such would present a conflict of interest, the representative cannot be released from official duties because he or she is serving a priority need of the Government, or the representative is an employee whose release would result in unreasonable costs to the Government. This section also proposes that, if the representative is an agency employee, he or she may not perform representational functions while in a duty status and is not able to claim agency reimbursement for any expenses incurred while performing representational functions.

Proposed § 351.905 describes the procedures by which adjudication of appeals is to take place, including how to address conflicts of interest, appeals by OPM employees, investigative authorities, a requirement for OPM to notify interested parties of the decision, and relevant remedies, if any. The section proposes for OPM personnel to adjudicate appeals by employees of other agencies, provided such personnel have not served in a position impacted by a RIF action or served as a representative for an employee subject to a RIF action in the two years prior to the date on which the appeal was filed. The section further proposes to permit OPM to appoint an administrative law judge (ALJ) to preside over the appeal. It does not require OPM to appoint an ALJ for non-OPM employees. In contrast, to insulate OPM employees' appeals from agency involvement, this section proposes to assign an ALJ to adjudicate such appeals and restricts OPM from disturbing the ALJ's initial decision except if there has been a harmful procedural irregularity in the proceedings before the ALJ or if the ALJ makes a clear error of law. Under this construction the OPM Director would be proactively exercising restraint in permitting decisions pertaining to OPM employees to lie undisturbed, not delegating his authority to the ALJ. In essence, the OPM Director is

regulatorily tying his own hands but can nevertheless choose to regulatorily untie them. This leaves the ALJ as a properly supervised inferior officer, not a principal officer. *See United States v. Arthrex, Inc.*, 594 U.S. 1, 6 (2021) (holding that the Appointments Clause provides that inferior officers may exercise executive power provided they are directed and supervised by a principal officer.).

For "harmful procedural irregularity," the appealing party must prove the irregularity in the application of procedures was likely to have caused the ALJ to reach a conclusion different from the one it would have reached in the absence or cure of the irregularity. The section also proposes to empower OPM to investigate or audit the RIF action to ascertain facts, which will be based on the developed written record or, in the sole discretion of OPM, a hearing if it deems such a hearing necessary and efficient. OPM defines "necessary and efficient" to mean circumstances in which the written record is insufficiently developed to make a determination regarding one or more facts material to the outcome of the appeal, or where there is a disputed issue of witness credibility that is material to the outcome of the appeal. In cases in which an audit or investigation is conducted, the section proposes to require OPM to inform the parties and provide each with a reasonable opportunity to supplement their positions with additional arguments or information. This section would further require OPM to notify the parties in writing of its decision on the appeal. This section proposes to provide remedies to the employee in an instance in which he or she is the prevailing party. In such cases, the section proposes that OPM will issue an order directing correction of the personnel action and providing the employee with any back pay, as well as reasonable attorney's fees and interest consistent with subpart H of part 550 of title 5 of the Code of Federal Regulations. Employees are further proposed to be precluded from compensatory damages or other relief not authorized under 5 U.S.C. 5596(b). Finally, the section proposes that, if the agency requests a reconsideration of an initial decision, or OPM reopens the case, the ordered relief must be adhered to until OPM issues a second order, in which case the parties must adhere to the second order.

Proposed § 351.906 describes the authority of OPM to prevent harassing communications by the parties via a cease-and-desist directive, and the penalties for failing to follow a directive from OPM. Specifically, the proposed

⁶⁴ This proposed rule contemplates retaining the rights currently codified at 5 CFR 351.902 elsewhere in the subpart.

language would authorize OPM to direct any party to cease-and-desist 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 impose 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, who deserve to be fully protected from undue scrutiny. 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.

Proposed § 351.907 describes the authority and basis for OPM to reconsider its decision. The section proposes to authorize OPM in its sole discretion for only delineated grounds, and only upon request of a party to the dispute to reopen and reconsider an initial decision issued under proposed § 351.905. This authority is proposed to be time-limited to within 30 calendar days from issuance of the initial decision. This section proposes to require any request for reconsideration of an initial decision to be filed using the same e-filing system employees or their representatives are to use to file their initial appeals. The section proposes to delineate the grounds for reconsideration to be: (1) an erroneous finding of fact material to the outcome of the decision; (2) an erroneous

interpretation of statute or regulation, or application of the facts of the case to such law; (3) new and material evidence (which is proposed to constitute new information contained in documents, not just new documents, which was unavailable despite due diligence) or legal argument has become available that, despite the petitioner's due diligence, was not available when the record closed; or (4) OPM finds good cause to reconsider an appeal. The section further proposes that, in an instance in which there is an allegation of erroneous interpretation of statute or regulation, or application of case facts to the law, the petitioner must further explain how the error affected the case outcome. The section further proposes that, in any case that OPM reopens for review, OPM is authorized to issue a decision, require the parties to submit argument and evidence, or take any other action necessary for final disposition. The section proposes to empower OPM to affirm, reverse, modify, or vacate the initial decision in whole or in part, as well as issue a reconsidered decision, and where appropriate, order a date for compliance. It also precludes any further right of administrative appeal.

In proposed § 351.908, 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 process as necessary to ensure that the Director is able to sufficiently supervise adjudicators and 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 to avoid a constitutional problem. *Seila Law v. Consumer Finance Protection Bureau*, 140 S. Ct. 2183 (2020). OPM believes the Director should have the final decision-making authority for OPM to avoid legal challenges to the constitutionality of this regulation.⁶⁵

Proposed § 351.909 describes the process by which OPM's initial decision becomes its final decision. The section proposes that initial decisions become final when neither party requests

reconsideration within 30 calendar days and the Director does not reopen a matter. It further proposes to convert a reconsidered decision into a final decision 30 calendar days following its issuance if the Director does not intercede but, in such cases, backdates the date on which the final decision becomes effective to the date on which the reconsidered decision is issued. In instances in which the Director does intercede, this section proposes to define a final decision as effective as of the date on which the Director issues his or her decision.⁶⁶ Further, the section proposes to limit further rights to appeal following a final OPM decision, including judicial review. Finally, the section mandates OPM maintain a public website containing some final decisions adjudicated on the merits, and that any concerned party be permitted to access, upon request, any decision, whether on the public website or not.

As stated above, OPM is proposing to limit judicial review of decisions issued under this subpart to adhere to the CSRA's specific and well-defined statutory scheme for judicial review and prevent unnecessarily protracted litigation regarding RIFs. OPM recognizes the status quo that RIF appeals are appealable to the MSPB and then, in turn, to the Federal Circuit. 5 U.S.C. 7701, 7703(b). However, this pathway currently exists because of an OPM regulation, not because the CSRA itself specifically requires it. The detailed discussion above regarding the structure of the CSRA supports both the legal and prudential bases for limiting judicial review in accordance with the comprehensive statutory scheme. OPM believes that there is little added value from the review that an Article III court could provide relative to OPM's adjudicatory venue.

OPM's appeal process provides robust assurance for an employee that all laws and rules applicable to RIFs are followed and that employees will not be adversely impacted by errors. OPM will have all tools necessary to make an employee whole who is subject to an unlawful or improperly executed RIF. OPM is proposing conforming changes to § 351.802(a)(6) pertaining to the content of RIF notices to employees. The current subsection describes a right to appeal to MSPB. Proposed § 351.802(a)(6) will replace references to the MSPB with OPM, except for employees with a statutory right of

⁶⁵ See *Lucia v. Sec. & Exch. Comm'n*, 585 U.S. 237 (2018) (holding administrative law judges to whom the SEC could delegate responsibility to preside over enforcement proceedings are Officers of the United States) and *Freytag v. Comm'r*, 501 U.S. 868 (1991).

⁶⁶ This regulation is modeled after those of the Commission, published in 1949. U.S. Senate Committee on Post Office and Civil Service, *supra* note 23, at p. 68.

appeal to MSPB under 38 U.S.C. chapter 43. OPM is making this change to conform with changes to appeal rights as proposed in § 351.901.

Proposed § 351.807(e) removes the reference to the MSPB to conform with changes to appeal rights as proposed in § 351.901.

III. Regulatory Analysis

A. Statement of Need

The proposed rule seeks to modernize the current RIF appeals process. The current process has become cumbersome and less efficient than it needs to be. The proposed changes are needed to streamline this process to improve both the efficiency and consistency of this process. OPM believes this change can be achieved by leveraging its accumulated knowledge and expertise through its unique role as developer, administrator, and end-user of RIF provisions.⁶⁷ This perspective and insight are essential to streamlining the appeals process and the Government's ability to achieve consistent outcomes in the RIF appeals process.

B. Regulatory Alternatives

An alternative to this rulemaking is to revoke the ability for a federal employee to appeal a RIF action entirely. Congress provided discretion to OPM pursuant to 5 U.S.C. 3502(d)(2)(E) when directing it to provide a notice which includes "a description of any appeal or other rights which *may* [emphasis added] be available." However, were OPM to choose this alternative, employees subject to RIFs would not be able to seek relief for a RIF conducted not in accordance with applicable statutes and regulations. Employees have enjoyed the ability to appeal a RIF action to the Executive Branch for nearly a century, and OPM believes it is unwise to reverse this long-standing precedent.

Another alternative is to delegate the authority to review RIF appeals to each agency itself. This solution is similarly imprudent given the conflicts of interest that may arise, which are addressed elsewhere in this rule. Further, the same shortcomings that exist by placing the RIF appeal process at MSPB, including contravening the best reading of the authorizing statute, efficiency losses

from lack of expertise, among others, would not just remain, but would be exacerbated.

A third alternative is to propose a rule that would re-house the RIF appeal rights at OPM while mirroring the appeal rights and procedures currently in place at MSPB. However, MSPB procedures add needless, quasi-judicial complexity to a process fundamentally designed to ensure federal agencies are properly evaluating whether an agency's reorganization adhered to congressional directive and agency internal policy. Appellants to MSPB receive a full hearing when the matter is within MSPB's jurisdiction. *See* 5 U.S.C. 7701(a). This includes a full discovery process causing needless delay and transactional cost increases resulting from protracted adjudication and potential litigation. The MSPB procedures, even housed at OPM, are also unnecessary given the limited grounds for appeal. As the central personnel agency for the federal government tasked with regularly monitoring and enforcing the civil service rules and regulations, OPM can leverage its considerable expertise to adjudicate RIF appeals efficiently in accordance with Merit System Principles without having to rely on the costly, burdensome, and time-consuming processes MSPB employs for its adjudications.

A further alternative would be to seek to change the procedures applicable to MSPB RIF appeals to more closely align with the proposed process in this rule. However, that avenue is closed to OPM. Under *AFGE v. OPM*, OPM cannot issue any "regulation that purports to instruct the MSPB how to conduct personnel appeals." 821 F.2d 761, 768 (D.C. Cir. 1987). Instead, "if OPM chooses to use the MSPB for dispute resolutions, it must take that statutory device as it finds it." *Id.* at 769.

C. Impact

OPM expects the impact of these rules will be a more streamlined and consistent RIF appeals process. The proposed RIF appeals process is similar to the classification appeals process currently administered by OPM whereby determinations are made on information provided by an agency and appellant in writing, except in circumstances in which OPM determines it necessary to conduct an investigation or audit. OPM can leverage its experience with classification appeals, and its expertise in developing and administering RIF rules over the decades, into an economy of scale with respect to RIF appeals. OPM has a unique perspective with respect to RIF

actions; OPM has a decades-long history of developing and administering RIF rules which includes providing hands-on technical policy advice and assistance to agencies as well as operational RIF support on a reimbursable basis. And, as an employing agency, OPM has applied these rules to its own workforce in several RIFs over the years. OPM has the advantage of being both the practitioner and the policy expert and believes it is in the best position to adjudicate appeals for federal agencies. OPM believes transferring the appeals function from MSPB to OPM and confining OPM reviews of agency actions to the written record promotes standardization and consistency in outcomes—both of which promote the efficiency of government operations, including by leading to fewer challenges and reconsiderations.

D. Costs

This proposed rule, once finalized and in effect, would affect how a federal employee may pursue an appeal asserting an improperly executed RIF resulting in his or her termination. This proposal grants authority of these appeals to OPM. The proposed rule also removes authority from MSPB to adjudicate complaints asserting erroneous findings of fact, erroneous interpretation of statute or regulation to the facts of the case, the existence of new material or legal arguments not available when the record closed, or other good cause to consider an appeal.

The return of adjudicative responsibility to OPM will likely result in net cost savings to the government. The proposed rule streamlines the adjudicative process by replacing discovery with an as-needed investigation or audit conducted by OPM. The parties will no longer have the right or ability to conduct discovery, an often contextually needless process given the formulaic nature of a RIF that can result in protracted costs (including time spent on document production, depositions, and written discovery, each of which involve extensive costs in time and resources for the government) creating extensive and costly delays in the adjudicative process.⁶⁸ It also eliminates an employee's right to a hearing in favor of decisions based on the written record unless OPM determines that a hearing is both necessary and will result in an efficient

⁶⁷ OPM emphasizes the independence of its adjudicative function from its policymaking function. It further notes that both the independent policymaking function and adjudicative function are under the supervision of the Director of OPM. As head of the agency, he is uniquely positioned to understand the intent and substance of the RIF process rules, which he can leverage to ensure they are properly effectuated. MSPB personnel lack such a perspective.

⁶⁸ OPM recognizes MSPB regulations provide for time constraints on discovery. 5 CFR 1201.73. However, these regulations also provide for an unlimited extension at the direction of the judge, which can extend the discovery timeline far beyond the regulatory timeline.

adjudication. The rule also locates the adjudicative function at OPM, resulting in a significant cost savings based on a reduction in personnel salaries as detailed below.⁶⁹

OPM estimates that this rulemaking will require individuals employed by more than 80 federal agencies, including MSPB and EEOC, to modify their regulations, policies, and procedures to implement this rulemaking and train human resources (HR) practitioners, hiring managers, attorneys, and administrative judges. For the purposes of this proposal, OPM assumes the 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.

To comply with the regulatory changes, affected agencies would need to review the final rule and update their regulations, policies, and procedures. OPM estimates that, in the first year following publication of the final rule, doing so will require an average of 100 hours of work by employees with an average hourly cost of \$154.76. This work would result in estimated costs in that first year of implementation of about \$15,476 per agency, and about \$1.2 million governmentwide.

Recurring Costs and Savings

OPM estimates that, in general and on an annual basis, approximately 292 employees will file appeals pursuant to a RIF. This figure is derived from averaging all RIF appeals (8,770) from 1995 to the present.⁷⁰ While OPM

acknowledges the significant number of RIF appeals filed in recent months,⁷¹ OPM views this as anomalous and not indicative of a broader trend.

This analysis compares the cost of an adjudication at MSPB relative to OPM. OPM believes MSPB employs administrative judges at the GS–14 and GS–15 grade levels to adjudicate appeals. OPM further assumes that each RIF appeal requires one administrative judge paid at 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) and one paralegal at the GS–11, step 5, from the Washington, DC locality pay table (\$95,878 annual locality rate and \$45.94 hourly locality rate). OPM assumes that the total dollar value of labor, including wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$154.76, \$91.88, and \$216.30 per hour for these respective positions. OPM estimates each initial appeal currently takes MSPB personnel 40 and four hours for an administrative judge and paralegal to adjudicate an initial appeal, respectively. Based on these assumptions, OPM estimates the cost to MSPB of adjudicating an initial appeal to be \$6,557.92 per case, or \$1.9 million per year for 292 appeals.

OPM anticipates handling initial procedural RIF appeals will require one paralegal at the rate in 2025 of GS–11, step 5, from the Washington, DC locality pay table (\$95,878 annual locality rate and \$45.94 hourly locality rate) and one staff assistant at the rate in 2025 of GS–7, Step 5, from the Washington, DC locality pay table (\$64,788 annual rate and \$31.04 hourly locality rate) and one staff assistant at the rate in 2025 of GS–7, step 5, from the Washington, DC locality pay table (\$64,788 annual locality rate and \$31.04 hourly locality rate) to handle procedural dismissals, including but not limited to failure to file timely or for lack of jurisdiction. Assuming a 200% value of labor, including wages, benefits, and overhead, the assumed hourly labor cost for these positions are \$91.88 and \$62.30 respectively. OPM further anticipates that, predicated on historical precedents for volume of RIF appeals and the necessary resources used for similarly situated appellate procedures, both the paralegal and the staff assistant will have additional responsibilities as part of their duties. OPM estimates each

excluding the 2025 RIFs protects against an over-estimate of the overall cost.

⁷¹ U.S. Merit Sys. Prot. Bd., “Annual Performance Plan for FY 2025–2026” (May 30, 2025), https://www.mspb.gov/about/annual_reports/MSPB_APP_for_FY_2025_2026.pdf.

initial appeal will require 20 hours for the paralegal and 4 hours from the staff assistant to adjudicate initial appeals. This results in a per-appeal cost of about \$2,085, and an annual cost of approximately \$135,025 for 219 appeals.

OPM anticipates that adjudicators will handle 73 initial appeals that are timely and germane. OPM further anticipates handling initial non-procedural RIF appeals will require an adjudicator at the rate in 2025 of GS–13, step 5, from the Washington, DC locality pay table (\$136,486 annual locality rate and \$65.48 hourly locality rate) and one paralegal at the rate in 2025 of GS–11, Step 5, from the Washington, DC locality pay table (\$64,788 annual rate and \$31.15 hourly locality rate). Assuming a 200% value of labor, including wages, benefits, and overhead, the assumed hourly labor cost for these positions are \$130.96 and \$91.88 respectively. OPM estimates that each appeal will require 20 hours from the adjudicator and one hour from the paralegal, resulting in a roughly \$2,700 per case cost, or nearly \$200,000 for 73 appeals.

With respect to petitions for reconsideration, OPM estimates that MSPB would hear 155 requests (53 percent) for reconsideration of an initial appeal. This is based on data from the MSPB’s three most recent annual reports for which there is data, which indicate that employees petitioned for review of initial MSPB decisions in 53 percent of RIF decisions.⁷² With respect to the cost to adjudicate petitions for review from initial appeals, we estimate that each petition requires 4 hours each for the Chairman and two Members of the MSPB respectively, paid at a rate of Executive Schedule Level IV of \$195,200 (\$93.53 hourly rate); and 16 hours for one attorney paid at the GS–15, step 5, from the Washington, DC, locality pay table (\$189,950 annual locality rate and \$91.02 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 \$187.06, \$187.06, and \$182.04 for these respective positions, or about \$683,413 per year for 155 petitions for review.

Given the expertise present in MSAC and the limited grounds under which OPM proposes to be able to grant a request to reopen and reconsider an initial appeal, OPM anticipates 5 percent of the 292 employees who make an initial appeal, or 15 employees, will

⁷² MSPB’s Annual Reports for FY 2020 through FY 2024 can be found on MSPB’s website at https://www.mspb.gov/about/annualreport_archive.htm.

⁶⁹ OPM used the most recently available data in the FedScope employment database, updated May 2024, to estimate grade levels of MSPB personnel assigned to adjudicate appeals covered by this proposed rule. The data is available at <https://fedscope.opm.gov/>.

⁷⁰ OPM has opted to include all RIF appeals from 1995 to the present, inclusive of the comparatively increased number occurring during the Clinton Administration relative to the George W. Bush, Obama, and first Trump administrations. OPM has chosen to include this information in its analysis in the interest of transparency in light of this being the oldest data available in its FedScope database. OPM is, however, excluding the anomalously large number of RIFs from 2025. OPM believes including the Clinton RIFs while excluding the 2025 RIFs is the best path forward because while OPM is not aware of any decision to initiate future large-scale RIFs, excluding the potentiality that such an occurrence may happen would potentially render this estimate inaccurately low. By including the Clinton Administration data, however, OPM seeks to protect against a potential under-estimate of the necessary overall cost to the government of RIF appeals on an annualized basis. Similarly,

request to reopen and reconsider an initial appeal. OPM anticipates that each reconsideration will require one adjudicator at the rate in 2025 of GS–14, step 5, from the Washington, DC locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate) and one paralegal at the rate in 2025 for GS–11, step 5, from the Washington, DC locality pay table (\$95,878 annual locality rate and \$45.94 hourly locality rate) to manage these appeals. Assuming a 200% value of labor, including wages, benefits, and overhead, the assumed labor cost for these positions are \$154.76 and \$91.88 per hour, respectively. OPM estimates that each adjudication of a request to reopen and reconsider an initial appeal requires 16 hours and one hour of the adjudicator's and paralegal's time, respectively. This results in a per-case cost of roughly \$2,568 or about \$38,520.60 per year for 15 requests to reopen and reconsider initial appeals.

There is also a cost-benefit to agencies of litigating appeals and reconsiderations at OPM rather than MSPB. Under the status quo, OPM estimates that agencies' litigation is handled by an agency attorney at the rate in 2025 of GS–14, step 5, from the Washington, DC locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate), one paralegal at the rate in 2025 of GS–11, step 5, from the Washington, DC locality pay table (\$95,878 annual locality rate and \$45.94 hourly locality rate), one supervisory attorney at the rate in 2025 of GS–15, step 5, from the Washington, DC locality pay table (\$189,950 annual locality rate and \$91.02 hourly locality rate). Assuming a 200% value of labor, including wages, benefits, and overhead, the assumed hourly rate for these positions are \$154.76, \$91.88, and \$182.04 respectively. OPM estimates that each appeal will require 80 hours from the agency attorney, four hours from the paralegal, and 8 hours from the supervisory attorney, resulting in a per-case cost of \$14,204.64, or \$4,147,754.88 cost to agencies to litigate initial appeals. OPM further estimates that an agency attorney compensated at the same GS–14, step 5, Washington, DC locality pay table will handle petitions for reconsideration, with each petition requiring 24 hours of the attorney's time, or \$3,714.24 per case. In total, OPM estimates the cost of the petition for reconsideration to be \$575,707.20, for a total cost to agencies of litigating at MSPB to be \$4,723,462.08.

OPM estimates the cost to agencies of litigation at OPM relative to MSPB would dramatically decrease. OPM estimates that agencies' litigation would

be handled by an agency attorney at the rate in 2025 of GS–14, step 5, from the Washington, DC locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate), one paralegal at the rate in 2025 of GS–11, step 5, from the Washington, DC locality pay table (\$95,878 annual locality rate and \$45.94 hourly locality rate), one supervisory attorney at the rate in 2025 of GS–15, step 5, from the Washington, DC locality pay table (\$189,950 annual locality rate and \$91.02 hourly locality rate). Assuming a 200% value of labor, including wages, benefits, and overhead, the assumed hourly rate for these positions are \$154.76, \$91.88, and \$182.04 respectively. As noted above, OPM estimates that the efficiencies gained by this rule will result in 128 appeals reaching the litigation stage in which agencies would have to devote more than a negligible amount of resources. As a result, OPM estimates that the cost to litigate initial appeals at OPM to be \$1,025,822.72. OPM further estimates that an agency attorney compensated at the same GS–14, step 5, Washington, DC locality pay table will handle petitions for reconsideration, with each petition requiring 24 hours of the attorney's time, or \$3,714.24 per case. For the reasons stated above, OPM estimates only 15 complaints will need to be reopened and reconsidered. Therefore, in total, OPM estimates the cost of the petition for reconsideration to be \$575,707.20, for a total cost to agencies of litigating at OPM to be \$1,081,536.32, or \$3,641,925.76 less costly per year.

OPM notes that federal employees subject to a RIF action may file an Equal Employment Opportunity (EEO) complaint. OPM believes that terminations on EEO grounds are, as a general matter, rare, and that employees would have substantial added difficulty claiming a RIF action to be pretextual due to the purpose of, and nature by which, a RIF is conducted. Further, OPM notes that in Fiscal Year 2021 (FY21), the most recent year for which there is publicly available data, more than half of federal employees who engaged in counseling sessions related to potential EEO violations ultimately resolved their concerns by withdrawing from the complaint process.⁷³ This leads OPM to the conclusion that exceedingly few employees will file an EEO complaint related to a RIF action. Therefore, OPM estimates 1 percent of

employees who would otherwise file a RIF appeal would instead file an EEO complaint, resulting in 3 complaints annually. OPM estimates that each EEO complaint will require 125 hours by attorney at the rate in 2025 of GS–14, step 5, from the Washington, DC locality pay table (\$161,486 annual locality rate and \$77.38 hourly locality rate) to manage each complaint. Assuming a 200% value of labor, including wages, benefits, and overhead, the labor cost for this position is \$154.76 per hour. Factoring in \$5,000 worth of miscellaneous litigation costs associated with each appeal, OPM estimates it will cost roughly \$88,000 for EEOC to manage RIF complaints resulting from this rulemaking.

In sum, OPM predicts considerable savings to the American taxpayer resulting from returning the venue to hear appeals of RIF actions from MSPB to OPM. OPM estimates that it will cost the taxpayer more than \$7.3 million, inclusive of agency litigation costs, to adjudicate initial appeals and petitions for review on an annual basis absent this rulemaking. Conversely, OPM estimates it would cost just more than \$1.1 million to taxpayers for OPM to adjudicate initial appeals and requests to reopen and reconsider an initial decision. This proposal would result in over \$6.1 million in annual savings to the government.

E. Benefits

In addition to the direct cost savings this proposed rule would generate, OPM expects that the faster adjudication of appeals will result in additional benefits. First, receiving a timely decision on an appeal will provide the individual with a clear determination and provide much-needed certainty, quickly. Agencies will similarly benefit as the streamlined appeal procedures proposed in this rule remove the default requirement for a hearing before a MSPB AJ. This will reduce the costly and protracted legal discovery process between an appellant and agency. Moreover, a timely decision on an appeal will help the Government to limit backpay and attorney's fees should an individual be improperly terminated as part of a RIF.

OPM also expects these rules will result in a more efficient RIF appeals process. The proposed RIF appeals process is similar to the classification appeals process currently used by OPM. OPM believes transferring the appeals function from MSPB to OPM and confining OPM reviews of agency actions to the written record, except in rare circumstances where OPM determines additional information is

⁷³ U.S. Equal Employment Opportunity Comm. "Annual Report on the Federal Workforce Part I: EEO Complaint Processing Activity Fiscal Year 2021" (Dec. 2024), https://www.eeoc.gov/sites/default/files/2024-11/FY%202021%20Annual%20Report%20Workforce%20Part%20I_final_508.pdf.

needed, promotes standardization and consistency in outcomes—both of which promote the efficiency of government operations because this proposed process should lead to fewer challenges and reconsiderations.

In addition, OPM expects greater consistency with respect to the outcomes of employees' appeals. This expectation is due to OPM's unique position as the agency authorized by Congress to promulgate these rules, OPM's decades-long administration of RIF rules on a governmentwide basis, and OPM's own experiences as an employing agency that has applied RIF rules numerous times over the decades in its own downsizing actions. OPM believes this inherent familiarity and history with the RIF rules and RIF process will lead to more efficiency and consistency in adjudicating appeals across the government for agencies and federal employees.

F. Reliance Interests

OPM understands that the current regulations governing administrative appeals of RIFs have been in place for many decades. It plans to accommodate any reliance interests by providing, in the "Effective Date" section of the Final Rule, that the new procedures will not be applied retroactively to appeals that were filed with the MSPB before the effective date of the new regulation. While OPM does not believe that any reliance interests are implicated by the new appeals system beyond the fact that some unresolved appeals remain pending with the MSPB, it invites comments regarding any reliance interests that may have been engendered by the current RIF appeal regulations.

IV. Procedural Issues and Regulatory Review

A. Regulatory Review

The Office of Information and Regulatory Affairs in the Office of Management and Budget has designated this as a significant regulatory action under E.O. 12866 section 3(f). Accordingly, 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 that 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. This rulemaking does not reach that threshold. This proposed rule is expected to be an Executive Order 14192 deregulatory action.

B. Regulatory Flexibility Act

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because this rule will apply only to Federal agencies and employees.

C. 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 (Aug. 10, 1999), the Director of OPM certifies that this rulemaking does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Civil Justice Reform

This regulation meets the applicable standard set forth in subsection 3(a) and paragraph 3(b)(2) of Executive Order 12988 (Feb. 7, 1996).

E. 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.

F. Paperwork Reduction Act of 1995

This regulatory action will impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). 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 351

Administrative practice and procedure, Government employees.

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.

Office of Personnel Management.

Jerson Matias,

Federal Register Liaison.

Accordingly, for the reasons stated in the preamble, OPM proposes to amend 5 CFR part 351 as follows:

PART 351—REDUCTION IN FORCE

■ 1. The authority citation for part 351 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; E.O. 14284, 90 FR 17729; 5 CFR 2.2(c). Sec. 351.801 also issued under E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart H—Notice to Employee

■ 2. Amend § 351.802 by revising paragraph (a)(6) to read as follows:

§ 351.802 Content of notice.

(a) * * *

(6) The employee's right, as applicable, to appeal to OPM. The agency must also comply with § 1201.21 of this title.

* * * * *

■ 3. Amend § 351.807 by revising paragraph (e) to read as follows:

§ 351.807 Certification of expected separation.

* * * * *

(e) An agency determination of eligibility for certification may not be appealed.

* * * * *

■ 4. Revise subpart I to read as follows:

Subpart I—Appeals

Sec.

§ 351.901 Right to appeal.

§ 351.902 Procedures for submitting appeals.

§ 351.903 Form and content of RIF appeal and agency response.

§ 351.904 Employee representatives.

- § 351.905 Adjudication of appeals.
- § 351.906 Sanctions and protective orders.
- § 351.907 Reconsideration of an initial decision.
- § 351.908 Review by the OPM Director.
- § 351.909 Final decision.

§ 351.901 Right to appeal.

(a) *Right of appeal.* An employee who has been the subject of a reduction-in-force action may appeal an action taken under this part to the Office of Personnel Management (OPM).

(b) *Burden of Proof.* The employee (*i.e.*, appellant) bears the burden of proof to demonstrate, by a preponderance of the evidence:

- (1) The timeliness of the appeal,
- (2) OPM possesses jurisdiction over the appeal, and
- (3) The reduction-in-force action (*i.e.*, more than 30-day furlough, separation, or demotion due to a reduction in force) was conducted inconsistent with either statute or OPM regulations such that the employee would not have suffered the same or another reduction-in-force action.

(c) *Exclusive appeal procedure.* The procedures in this part are the sole and exclusive means of appealing any reduction-in-force action, and shall supersede any appeal procedures found in agency policies or collective bargaining agreements, but they do not otherwise preclude an employee from filing a complaint, appeal, or other matter within the jurisdiction of the Equal Employment Opportunity Commission, Federal Labor Relations Authority, an Inspector General, Merit Systems Protection Board, the Department of Labor Veterans' Employment and Training Service, or the Office of Special Counsel. A party cannot obtain judicial review of a decision under this part.

§ 351.902 Procedures for submitting appeals.

(a) *Filing an appeal.* A party, or his or her authorized representative, seeking to file an initial appeal or reconsideration of an initial appeal under this part must utilize the electronic filing (e-filing) system available at [URL TBD]. Unless a party demonstrates good cause and seeks approval from OPM, OPM will not accept any statements, evidence, or documents via electronic mail or postal mail.

(b) *Time limits.* An employee may submit an appeal of a reduction in force action within 30 calendar days from the effective date of the action. An appeal is deemed timely when it is electronically filed by 11:59 p.m. Eastern Standard 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 an Agency action. 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 employee does not submit an appeal within the time set by this section, the appeal will be dismissed as untimely filed unless the employee demonstrates good cause for an untimely appeal.

(3) The determination of good cause will be in the sole and exclusive discretion of OPM.

(c) E-filing procedures.

(1) All parties and their representatives to an appeal or reconsideration must register as instructed by OPM on its e-filing system 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 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, including ordering 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, regulations, 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 best 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 e-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 e-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. As the e-file system is the only accepted method for filing an appeal, 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 part. 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 e-filing system are deemed received on the date of the electronic submission.

§ 351.903 Form and content of RIF appeal and agency response.

(a) *Initial appeal.* An employee's appeal shall be in writing and must state the basis of the employee's appeal; and the legal name, best address, and email address or phone number of the appellant and appellant's representative, if any; and must include any documentation supporting the appellant's appeal.

(b) *Agency response.* The agency response to an appeal must be filed within 30 calendar days of the initial appeal; contain the name of the appellant and of the agency whose action the appellant is appealing; a statement identifying the agency action taken against the appellant and stating the reasons for taking the action; all documents contained in the agency record of the action; designation of and signature by the authorized agency representative; and any other documents or responses requested by OPM. The agency's 30 days to respond begins upon service of the appeal.

(c) *Reply*. The employee may file a reply to the agency response to an initial appeal 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 initial appeal. The reply may not raise new allegations of error.

(d) *Inspection of OPM's appellate record*. The employee, an employee's representative, and the agency will be permitted to inspect OPM's appellate record on request.

(e) *Service of Documents*. The employee, employee's representative, and agency 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.

§ 351.904 Employee representatives.

An employee may select a representative of his or her choice to assist in the preparation and presentation of an appeal, provided that the employee 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 employee'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.

§ 351.905 Adjudication of appeals.

(a) *Appeals by non-OPM employees*. OPM will assign personnel to adjudicate an appeal under this subpart by an employee of an agency other than OPM. However, no OPM employee may be assigned to adjudicate an appeal if the employee has a relationship with the appellant employee or, during the

preceding two years, that person was an employee of the agency that is a party to the action to be assigned, or the employee was subject to, an action covered under this part. When necessary, OPM may appoint an administrative law judge to preside over the adjudication of an appeal.

(b) *Appeals by OPM employees*. OPM will assign an administrative law judge to adjudicate an appeal under this subpart by an OPM employee. To insulate the adjudication of its own employees' appeals from agency involvement, OPM will not disturb initial decisions in those cases unless a party shows that there has been harmful procedural irregularity in the proceedings before the administrative law judge or 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) *Ascertainment of facts*. OPM may audit or investigate an agency's reduction in force action in the course of adjudicating an appeal if it determines, in its sole and exclusive discretion, the interest of justice is served by such an audit or investigation. The review of an agency action will be based solely on the developed written record unless OPM determines that a hearing or any other appropriate action is necessary and efficient to resolve an appeal and directs the parties to participate in such hearing or comply with such action. For purposes of this section, the term *necessary and efficient* means circumstances in which the written record is insufficiently developed to make a determination regarding one or more facts material to the outcome of the appeal, or where there is a disputed issue of witness credibility that is material to the outcome of the appeal. Where an investigation or audit is conducted, OPM will:

(1) Inform the employee, the employee's representative, and the agency of an investigation or audit; and

(2) Provide the employee, the employee's representative, and the agency with the results of an investigation or audit, and a reasonable opportunity to submit arguments or additional information to support their positions.

(d) *Failure to participate in ascertainment of facts*. If a party fails to participate in an audit or investigation pursuant to 351.905(c), OPM may,

except when prohibited by law, impose any sanction listed at 351.906(b)(1)–(3).

(e) *Initial decision*. OPM will notify the employee, employee's representative, and agency in writing of its decision.

(f) *Remedies*. (1) If the employee is the prevailing party, OPM will order relief including correction of the personnel action and any back pay, interest, and reasonable attorney fees consistent with subpart H of part 550 of this chapter. The employee as a prevailing party is not entitled to compensatory damages or other relief not authorized under 5 U.S.C. 5596(b).

(2) If the agency timely requests reconsideration of an initial decision or OPM reopens and reconsiders an initial decision, the agency must continue to provide the relief ordered unless OPM issues an order staying any such relief. No such stay may be ordered that would deprive pay and benefits to the employee while the initial decision is pending reconsideration.

§ 351.906 Sanctions and protective orders.

(a) *Cease-and-desist directive*. OPM may issue a directive 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 should file such request using the e-filing procedures proscribed at § 351.902(c), and must include statement of reasons justifying the request, together with any relevant documentary evidence.

(b) *Failure to comply with an OPM directive*. When a party to an appeal fails to comply with a directive issued under paragraph (a), OPM shall, 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.

§ 351.907 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. An employee, the employee's representative, or the agency may request reopening and reconsideration of an initial decision within 30 calendar days from issuance of the initial decision. The request to reopen and reconsider must be filed in the same manner as an initial appeal.

(b) Grounds for which OPM may grant a request for reconsideration are:

(1) The initial decision contains erroneous findings of material fact sufficient to warrant an outcome different from that of the initial decision;

(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 reconsider an appeal.

(c) In any case that is reopened or reviewed, OPM may:

(1) Issue a reopened and reconsidered decision ("R&R decision") that affirms, reverses, modifies, vacates, or otherwise decides the case, 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.

(d) There is no further right of administrative appeal from the R&R decision.

§ 351.908 Review by the OPM Director.

The 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.

§ 351.909 Final decision.

(a) The initial decision becomes the final decision of OPM if a party does not request OPM to reopen or reconsider the initial decision within 30 calendar days from the date of the initial decision.

(b) A R&R decision pursuant to § 351.907 becomes OPM's final decision if the OPM Director does not reopen the decision pursuant to § 351.908 within 30 calendar days from the date on which the R&R decision was issued.

(c) A decision by the Director pursuant to § 351.908 is the final decision of OPM and effective upon issuance.

(d) There is no further right of appeal of a final decision of OPM.

(e) OPM shall maintain a publicly accessible website containing final decisions issued on this part that address a party's claim on the merits. Any final decision not made publicly available shall be made available upon request by a concerned party. For purposes of this subsection, a *concerned party* means the Federal employee or former Federal employee involved in a proceeding under this subpart, his or her representative selected pursuant to § 351.904, or a representative of a Federal agency or office.

[FR Doc. 2026-02576 Filed 2-9-26; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Doc. No. AMS-SC-25-0041]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Idaho-Eastern Oregon Onion Committee (Committee) to decrease the assessment rate established for the 2025–2026 and subsequent fiscal periods from \$.07 to \$.05 per hundredweight for onions grown in certain designated counties in Idaho and Malheur County, Oregon. The proposed assessment rate would remain in effect indefinitely until modified, suspended, or terminated.

DATES: Comments must be received by March 12, 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 submitted 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 may be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Chief, Northwest Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: Barry.Broadbent@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 Marketing Order No. 958, as amended (7 CFR part 958), regulating the handling of onions grown in certain counties in Idaho, and Malheur County, Oregon. Part 958 (referred to as the "Order") is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." The Committee locally administers the Order and is comprised of producers and handlers of onions operating within the area of production, as well as a public member.

This action 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 that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. Under the Order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable Idaho-Eastern Oregon onions for the 2025–2026 fiscal period, and continue until amended, suspended, or terminated.

This proposed rule would decrease the assessment rate for Idaho-Eastern Oregon onions handled under the Order from \$0.07 per hundredweight, the rate that was established for the 2023–2024 and subsequent fiscal periods, to \$0.05 per hundredweight for the 2025–2026 and subsequent fiscal periods.

Sections 958.41 and 958.42 of the Order authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2023–2024 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.07 per hundredweight of Idaho-Eastern Oregon onions handled within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on April 17, 2025, and unanimously recommended, with a vote of 11 in favor and none opposed, 2025–2026 fiscal period expenditures of \$702,788 and an assessment rate of \$0.05 per hundredweight of Idaho-Eastern Oregon onions handled for the 2025–2026 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were \$861,089. The proposed assessment rate of \$0.05 per hundredweight is \$0.02 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to better align assessment revenue with budgeted expenditures and to reduce its reserve funds to within a level consistent with the Order. The Committee projects 10,000,000 hundredweight of assessable Idaho-Eastern Oregon onions for the 2025–2026 fiscal period, which is equivalent to the 10,000,000 hundredweight that was projected for the 2023–2024 fiscal period.

The major expenditures recommended by the Committee for the 2025–2026 fiscal period include \$275,000 for promotions, \$175,345 for research, \$128,173 for salary expenses, \$88,270 for travel and office expenses, \$21,000 for export initiatives, and

\$15,000 for contingencies. For comparison, budgeted expenditures for the 2024–2025 fiscal period for promotions, research, salary, travel and office expenses, export initiatives, and contingencies were \$429,959, \$185,041, \$123,419, \$86,670, \$21,000, and \$15,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, the expected volume of assessable Idaho-Eastern Oregon onions, and the amount of funds available in the authorized reserve. The expected 10,000,000 hundredweight of Idaho-Eastern Oregon onions from the 2025–2026 crop would generate \$500,000 in assessment revenue at the proposed assessment rate (10,000,000 hundredweight multiplied by the \$0.05 assessment rate). The income generated from handler assessments, along with \$80,288 from reserve funds, \$100,000 awarded through the Specialty Crop Block Grant Program, and \$22,500 in other income, would be sufficient to meet the Committee's estimated program expenditures \$702,788 for the 2025–2026 fiscal period. Funds available in the operating reserve (projected to be about \$612,522 at the end of the 2025–2026 fiscal period) would be kept within the maximum permitted by the Order (not to exceed one fiscal period's operational expenses, as authorized in § 958.44).

The proposed assessment rate would continue in effect indefinitely until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information. Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2025–2026 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5

U.S.C. 601–612), the 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, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 108 producers of Idaho-Eastern Oregon onions in the production area and 29 handlers subject to regulation under the Order. Small agricultural producers of onions are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$3,750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$34,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average producer price received for dry fresh market onions in Idaho and Malheur County, Oregon, for the 2023 crop year (the most recent year for which there is NASS data) was \$21.50 per hundredweight. Total shipments of Idaho-Eastern Oregon onions for the 2023–2024 fiscal period were reported by the Committee to be 9,980,829 hundredweight. Using the NASS average producer price from the 2023 crop and the Committee's reported volume, the total 2023 crop value of Idaho-Eastern Oregon onions could therefore be estimated to be \$214,587,824 (9,980,829 hundredweight times \$21.50 per hundredweight). Dividing the crop value by the estimated number of producers (108) yields estimated average onion receipts per producer of \$1,986,924, which is well below the SBA threshold for small producers.

In addition, according to AMS Market News data, the reported average free on board (FOB) price for onions from the Idaho-Eastern Oregon region over the 2023–2024 fiscal period was between \$8.00 and \$24.00 per 50-pound container depending upon variety, size and grade, and shipping date. Assuming an average of \$16.00 per 50-pound container and multiplying this figure by 2 (to adjust to hundredweight) yields a calculated average FOB price of \$32.00 per hundredweight for the 2023–2024 fiscal period. Multiplying 2023–2024 Idaho-Eastern Oregon onion volume of 9,980,829 hundredweight by the

estimated average price per hundredweight of \$32.00 equals estimated total handler revenue of \$319,386,528. Dividing this figure by the 29 regulated handlers yields estimated average annual handler receipts of \$11,013,329 (\$319,386,528 divided by 29 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, using the above data and assuming a normal distribution, most of the producers and handlers of Idaho-Eastern Oregon onions may be classified as small entities.

This proposal would decrease the assessment rate collected from handlers for the 2025–2026 and subsequent fiscal periods from \$0.07 to \$0.05 per hundredweight of Idaho-Eastern Oregon onions. The Committee unanimously recommended, in a vote of 11 in favor and none opposed, 2025–2026 fiscal period expenditures of \$702,788 and an assessment rate of \$0.05 per hundredweight. The proposed assessment rate of \$0.05 is \$0.02 lower than the current rate. The Committee expects the industry to handle 10,000,000 hundredweight of Idaho-Eastern Oregon onions during the 2025–2026 fiscal period. Thus, the proposed \$0.05 per hundredweight assessment rate is expected to provide \$500,000 in assessment income (10,000,000 multiplied by \$0.05). In addition, the Committee expects to use \$22,500 of income from other miscellaneous sources, a \$100,000 award from the Specialty Crop Block Grant Program, and \$80,288 from its operating reserve to cover the portion of budgeted expenses not funded by assessment revenue (\$500,000 plus \$22,500 plus \$100,000 plus \$80,288 equals \$702,788).

In the most recent two fiscal periods, at the \$0.07 per hundredweight assessment rate, the Committee has received assessment revenue in excess of expenditures, with the balance being added to its reserve fund. To keep the Committee's operating reserve within Order's limit, the Committee was required to either increase its budget or decrease its assessment rate moving forward. The Committee recommended decreasing the assessment rate. The recommended \$0.05 per hundredweight rate would facilitate funding the bulk of the Committee's 2025–2026 fiscal period budgeted expenditures from assessment revenue, with expenditures in excess of assessment income being funded from other income sources (grants, voluntary contributions, and interest) and utilizing funds held in the operating reserve. This proposed rule would draw an estimated \$80,288 from the Committee's reserve fund. The

reserve fund's balance, expected to be \$612,522 at the end of the 2025–2026 fiscal period, would be kept at a level that the Committee believes is appropriate and which is compliant with the provisions of the Order.

Prior to arriving at this budget and proposed assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.07 per hundredweight, and decreasing the assessment rate by varying amounts. However, the Committee determined that the recommended \$0.05 per hundredweight assessment rate would materially fund most of its budgeted expenses, with the balance made up from other income and by utilizing \$80,288 of its operating reserve. The proposed assessment rate was derived by considering anticipated expenses, the projected volume of assessable Idaho-Eastern Oregon onions, grant funds awarded, other income, the projected balance of funds held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2023 crop year was \$21.50 per hundredweight of onions in the production area. Further, the Committee reported the quantity of assessable Idaho-Eastern Oregon onions handled in the 2023–2024 fiscal period was 9,980,829 hundredweight, which yields estimated total producer revenue of \$214,587,824 (\$21.50 per hundredweight multiplied by 9,980,829). Therefore, utilizing the assessment rate of \$0.05 per hundredweight, assessment revenue for the 2023–2024 fiscal period as a percentage of total producer revenue would have been approximately 0.23 percent (\$0.05 multiplied by 9,980,829 per hundredweight divided by \$214,587,824 and multiplied by 100).

This proposed rule would decrease the assessment obligation imposed on Idaho-Eastern Oregon onion handlers. Assessments are applied uniformly on all handlers, based upon their volume handled. Some of those costs may be passed on to producers. However, those costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The Idaho-Eastern Oregon onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 17, 2025, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally,

interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection 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 OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. 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 Idaho-Eastern Oregon onion 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 decreased 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, USDA has determined that this proposed rule is consistent with, and will effectuate the purposes of, the Act.

A 30-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 rule.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 958 as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON.

■ 1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2025, an assessment rate of \$0.05 per hundredweight is established for Idaho-Eastern Oregon onions.

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–02589 Filed 2–9–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 36, 43, 45, 48, 89, 91, 107, 108, 119, 133, 135, 137, and 146

[Docket No. FAA–2025–1908; Notice No. 25–07C]

RIN 2120–AL82

Normalizing Unmanned Aircraft Systems Beyond Visual Line of Sight Operations; Reopening of Comment Period; Denial of Extension

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); Reopening of comment period; Denial of extension.

SUMMARY: This action denies requests for extension of the reopening of the comment period for the notice of proposed rulemaking (NPRM) titled “Normalizing Unmanned Aircraft Systems Beyond Visual Line of Sight Operations” that was published in the *Federal Register* on January 28, 2026.

FOR FURTHER INFORMATION CONTACT: Michelle Ferritto, ARM–100, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20592; Phone: (844) 359–6982; Email: 9F-AA-UAS-BVLOS-Rule@faa.gov.

SUPPLEMENTARY INFORMATION: On August 7, 2025, the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA) published a notice of proposed rulemaking (NPRM) titled “Normalizing Unmanned Aircraft Systems Beyond Visual Line of Sight Operations” in the *Federal Register* (90 FR 38212; Notice No. 25–07). In that document, FAA proposed performance-based regulations to enable the design and operation of unmanned aircraft systems (UAS) mostly at low altitudes beyond visual line of sight (BVLOS) and for third-party

services that support these operations including UAS Traffic Management. The comment period for the NPRM closed on October 6, 2025.

During the comment period that closed on October 2025, FAA received significant comments on its proposals related to right-of-way rules, Automatic Dependent Surveillance-Broadcast (ADS-B) Out, electronic conspicuity, and detect-and-avoid. Noting the substantial interest in, and comment on, these policies, FAA published a notice to reopen the NPRM comment period in the *Federal Register* on January 28, 2026 (91 FR 3695; Notice No. 25–07B). The notice asks seven questions to solicit comments limited to electronic conspicuity and right-of-way to ensure FAA fully understands these comments and the relevant policy implications.

Denial of Extension of Reopened Comment Period

On January 31, 2026, FAA received a request for extension of the reopened comment period from James E. Whedbee, “until February 28, 2026, or such time thereafter as the Administrator deems appropriate is in the public interest.”¹ FAA has considered and hereby denies this request.

The commenter asserted that topics of the questions asked by the FAA are sufficiently complex to warrant a thoughtful response that may require more time than the reopened comment period permits. While the topics of the questions are complex, FAA asserts that the reopened comment period provides sufficient opportunity for interested persons to provide feedback on the limited topics given they are topics that were already broached in the NPRM. During the initial 60-day comment period, FAA received approximately 3,100 comments on the totality of the rule many of which referenced the topics on which FAA has solicited additional comment. Noting that, FAA finds that 14 days is sufficient to obtain comment on the limited topics described in the January 28, 2026, notice.

The commenter also asserted an extension should be granted because a lapse in funding impacting the Department of Transportation has interrupted the reopened comment period. FAA disagrees as the lapse in funding does not impact the ability for commenters to review the NPRM, the request for comments, or to submit comments. Further, the commenter asserted the reopened comment period

should be extended because other federal agencies impacted by the partial lapse in funding would miss their opportunity to comment. FAA disagrees with this assertion as other federal agencies have the opportunity to review the final rule and provide comments during the interagency coordination process handled by the Office of Information and Regulatory Affairs pursuant to E.O. 12866 for significant rulemakings, a process that is independent of the notice and comment process under the Administrative Procedure Act.²

The commenter also asserted that no person would be prejudiced by extending the reopening of the comment period. FAA disagrees, as keeping the reopened comment period open for an extended period on these limited topics could delay finalizing this rule. This delay would negatively impact other stakeholders, including UAS operators, manufacturers, standards organizations, and providers of supporting third-party services as they rely on the finalization of this rule to build and scale their operations.

Accordingly, FAA declines to grant the extension requests and the reopened comment period will close on February 11, 2026.

Issued under authority provided by 49 U.S.C. 106(f) and 44701, in Washington, DC.

Brandon Roberts,

Executive Director, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2026–02649 Filed 2–9–26; 8:45 am]

BILLING CODE 4910–13–P

POSTAL REGULATORY COMMISSION

39 CFR Parts 3010 and 3012

[Docket No. RM2025–3; Order No. 9447]

RIN 3211–AA42

Rules Regarding Off-the-Record Procedures

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Notice of Proposed Rulemaking proposes amendments to revise the Commission’s rules regarding permissible off-the-record procedures in proceedings with an opportunity for a hearing on the record. The proposed amendments also revise the Commission’s rules to clarify that informal off-the-record procedures are consistent with the Commission’s *ex parte* rules when participants receive

¹ Comment from James E. Whedbee, Docket FAA–2025–1908–3170 (Jan. 31, 2026).

² See 5 U.S.C. 553(c) (summary of notice and comment rulemaking).

advance notice and an opportunity to participate. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 12, 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. The Rule Summary can be found on the Commission's Rule Summary Page at <https://www.prc.gov/rule-summary-page>.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Basis of Proposed Rules
- III. Proposed Rules

I. Background

The Administrative Procedure Act (APA) is a federal law that, among other things, prescribes the procedural framework for formal agency adjudications and hearings required by statute to be made on the record.¹ Commission requirements for proceedings with an opportunity for a hearing on the record are described in 39 CFR part 3010, subpart F. Section 3010.302(e)(12), which governs prehearing conferences, requires the presiding officer and parties to consider and resolve several matters, including “[a]ll other matters which would aid in an expeditious disposition of the proceeding”

The proposed amendments would revise § 3010.302(e)(12) to clarify that, by consent, parties may use informal off-the-record procedures consistent with the APA to expedite resolution of proceedings without compromising on-the-record adjudications. The proposed amendments would also revise the Commission's rules to clarify that informal off-the-record procedures are consistent with the Commission's *ex parte* rules as long as certain requirements are met.

II. Basis of Proposed Rules

Pursuant to 39 U.S.C. 503, the Commission proposes two amendments to its rules. First, it proposes revisions

to the Commission's rules of practice and procedure in 39 CFR part 3010, subpart F governing proceedings conducted with an opportunity for a hearing on-the-record. The Commission proposes to amend existing § 3010.302(e)(12) to add a non-exhaustive list of permissible informal off-the-record procedures, including prehearing conferences, technical conferences, settlement conferences, or alternative dispute resolution.

Second, the Commission proposes revisions to the Commission's rules on *ex parte* communications in 39 CFR part 3012. The Commission proposes to amend existing section 3012.2(b)(3) to exclude from the definition of *ex parte* communications informal off-the-record procedures associated with on-the-record proceedings as long as participants receive advanced notice and an opportunity to participate.

The Commission finds that each of these revisions would align the regulations with APA provisions and current law, ensure consistency across the Commission's rules, and avoid any ambiguity regarding on-the-record proceedings.

III. Proposed Rules

List of Subjects

39 CFR Part 3010

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3012

Administrative practice and procedure, Courts.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3010—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3010 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

■ 2. Amend § 3010.302 by revising paragraph (e)(12) to read as follows:

§ 3010.302 Prehearing conferences.

* * * * *

(e) * * *

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the parties to use informal off-the-record procedures such as prehearing conferences, technical conferences, settlement conferences, or alternative

dispute resolution consistent with 5 U.S.C. 556.

* * * * *

PART 3012—EX PARTE RULES

■ 3. The authority citation for part 3012 continues to read as follows:

Authority: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

■ 4. Amend § 3012.2 by revising paragraph (b)(3) to read as follows:

§ 3012.2 Definition of ex parte communications.

* * * * *

(b) * * *

(3) Communications where advance public notice and an opportunity to participate is provided to all persons participating in the matter before the Commission that occur: during the course of off-the-record technical conferences associated with a matter before the Commission, or communications during the course of off-the-record procedures associated with proceedings with an opportunity for a hearing on-the-record under part 3010, subpart F of this chapter, including without limitation the pre-filing conference for nature of service cases required by § 3020.111 of this chapter; prehearing conferences conducted under § 3010.302(c) of this chapter; settlement conferences under § 3010.320 of this chapter; and alternative dispute resolution and settlement of complaints by informal procedures under § 3022.40 of this chapter.

* * * * *

By the Commission.

Mallory S. Richards,
Attorney-Advisor.

[FR Doc. 2026-02591 Filed 2-9-26; 8:45 am]

BILLING CODE 7710-FW-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[**MB Docket No. 26-29; RM-12016; DA 26-118; FR ID 330275**]

Television Broadcasting Services Norwell, Massachusetts

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Federal Communications Commission's (Commission) proposes to modify the Table of TV Allotments (table) of its rules by substituting channel 10 for 36

¹ Administrative Procedure Act, Public Law 79-404, § 6, 60 Stat. 237 (1946) (codified in 5 U.S.C. 551-559 and 701-706).

at Norwell, Massachusetts in response to a Petition for Rulemaking filed by RNN Boston License Co., LLC (RNN or Petitioner), the licensee of WWDP(TV) (WWDP or Station) channel 10, Norwell, Massachusetts (Norwell). In support of its channel substitution request, the Petitioner asserts that allowing the Station to remain on the air and continue to provide service to viewers within its service area. Given that RNN proposes to utilize its currently licensed parameters, we believe that channel 10 can be substituted for channel 36 at Norwell as proposed, in compliance with the principal community coverage and technical requirements.

DATES: Comments must be filed on or before March 12, 2026 and reply comments on or before March 27, 2026.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. *All filings must be addressed to the Secretary, Federal Communications Commission.*

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

FOR FURTHER INFORMATION CONTACT:

Shaun Maher, Media Bureau, at Shaun.Maher@fcc.gov, (202) 418-2324, or Mark Colombo, Media Bureau, at Mark.Colombo@fcc.gov, (202) 418-7611.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, in MB Docket No. 26-29; RM-12016; DA 26-118, adopted and released on February 5, 2026. The full text of this document is available online at <https://docs.fcc.gov/public/attachments/DA-26-118A1.pdf>.

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). *See* 47 CFR 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118-9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this notice of proposed rulemaking is available at <https://www.fcc.gov/proposed-rulemakings>.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622, in the table in paragraph (j), under Massachusetts, revise the entry for "Norwell" to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *				
(j) * * *				
Community				Channel No.
* * * * *				*
Massachusetts				
* * * * *				*
Norwell				10
* * * * *				*
* * * * *				

[FR Doc. 2026-02623 Filed 2-9-26; 8:45 am]

BILLING CODE 6712-01-P

Notices

Federal Register

Vol. 91, No. 27

Tuesday, February 10, 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

Food Safety and Inspection Service

[Docket No. FSIS–2025–0248]

Notice of Request To Renew an Approved Information Collection: Sanitation SOPs and Pathogen Reduction/HACCP

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to request renewal of the approved information collection regarding Sanitation Standard Operating Procedures (Sanitation SOPs) and pathogen testing and Hazard Analysis and Critical Control Point (HACCP) Systems requirements. There are no changes to the existing information collection. The approval for this information collection will expire on July 31, 2026.

DATES: Submit comments on or before April 13, 2026.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2025–0248. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 286–2255 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

SUPPLEMENTARY INFORMATION:

Title: Sanitation SOPs and Pathogen Reduction/HACCP.

OMB Number: 0583–0103.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, and properly labeled.

FSIS is announcing its intention to request renewal of the approved information collection regarding Sanitation Standard Operating Procedures (Sanitation SOPs), pathogen reduction, and Hazard Analysis and Critical Control Point (HACCP) systems requirements. There are no changes to the existing information collection. The approval for this information collection will expire on July 31, 2026.

FSIS regulations require that establishments: develop, implement, and revise, as needed, written Sanitation SOPs (9 CFR part 416); (2) conduct regular microbial testing to verify the adequacy of process controls for the prevention and removal of fecal

contamination and associated bacteria (9 CFR 9 CFR 310.18, 310.25(a), or 381.65 (f) and (g)); and (3) develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP, and maintain necessary records to support the system (9 CFR part 417).

Establishments may have programs that are prerequisite to HACCP that are designed to provide the basic environmental and operating conditions necessary for the production of safe, wholesome food. Because of its prerequisite programs, an establishment may decide that a food safety hazard is not reasonably likely to occur in its operations. The establishment would need to document this determination in its hazard analysis and include the procedures it employs to ensure that the program is working and that the hazard is not likely to occur (9 CFR 417.5(a)(1)).

FSIS has made the estimates below based upon an information collection assessment:

Respondents: Meat and poultry establishments.

Estimated annual number of respondents: 6,087.

Estimated annual burden on respondents: 7,045,303 hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may

be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

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 to this **Federal Register** publication 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 can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service that provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. The available information ranges 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, audiotope, 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.

Justin Ransom,

Administrator.

[FR Doc. 2026-02647 Filed 2-9-26; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

[Docket ID: NRCS-2025-0236]

Information Collection Request; Advancing Markets for Producers (Formerly Partnerships for Climate-Smart Commodities)

AGENCY: Commodity Credit Corporation and Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Natural Resources Conservation Service (NRCS) is requesting comments from all interested individuals and organizations on a revision of a currently approved information collection request associated with the Advancing Markets for Producers grant activity. The purpose of the Advancing Markets for Producers initiative is to prioritize producer support to develop sustained methods for expansion of markets for American agricultural products; prioritizing new markets, improving supply chains, and enabling direct-to-consumer sales, thereby improving economic opportunities for farmers; and prioritize methods to improve farmers

collective resource sharing, access to market infrastructure, and promotion of long-term economic sustainability within the amplification of market expansion. Additional information on the partnerships is available at <https://www.usda.gov>.

DATES: We will consider comments that we receive by April 13, 2026.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments, identified by Docket ID: NRCS-2025-0236 in the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Allison Costa below.

FOR FURTHER INFORMATION CONTACT: Allison Costa, telephone: (360) 768-3113; email: fpac.nrps.partnerships@usda.gov. Persons with disabilities who require alternative mean for communication should contact the USDA's TARGET Center at (844) 433-2774.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Advancing Market for Producers.

OMB Control Number: 0578-0031.

Type of Request: Revision of currently approved collection.

OMB Expiration Date: February 28, 2026.

Abstract: We are requesting comments on the burden for ongoing progress reporting. In general, reporting for the Advancing Markets for Producers grants will follow the guidelines included in the General Terms and Conditions, which are available at the following website: <https://www.fpacbc.usda.gov/about/grants-and-agreements/award-terms-and-conditions/index.html>.

Partners are required to submit progress reports after the first quarter and at least twice a year on the project, including the following information:

- Participating producers and landowners;
- Conservation practices applied;
- Outreach and training;
- Financial assistance for producers or landowners to implement conservation practices;
- Benefits associated with the implementation of conservation practices;
- Marketing and outreach related to commodities as a result of project activities;

- Technical assistance and resources are provided, especially to help producers overcome barriers to adopting conservation practices;

- Partnerships developed and leveraged, including public-private partnerships to foster and develop commodity markets; and

- *Commodity supply chain and demand impacts, as well as other economic benefits.*

Certain reporting elements may be required to be georeferenced (geospatially referenced).

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses, in hours, multiplied by the estimated total annual responses.

Estimate of Annual Burden: Public reporting burden for the collection of information is estimated to average 10.5 hours per response.

Respondents: Advancing Markets for Producers Awardees.

Estimated Number of Respondents: 125.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Number of Responses: 250.

Estimated Average Time per Response: 17 hours.

Estimated Total Annual Burden Hours: 4,250 hours.

We are requesting comments on all aspects of this information collection to help us:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- (2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- (3) Evaluate the quality, utility, and clarity of the information technology; and

- (4) Minimize the burden of the information collection on those who respond through the use of appropriate 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 where provided, will be made a matter of public record. Comments will be summarized and included in the

request for OMB approval of the information collection.

William Beam,

Executive Vice President, Commodity Credit Corporation.

Aubrey Bettencourt,

Administrator, Natural Resources Conservation Service.

[FR Doc. 2026-02625 Filed 2-9-26; 8:45 am]

BILLING CODE 3410-16-P

CIVIL RIGHTS COLD CASE RECORDS REVIEW BOARD

[Agency Docket Number: CRCCRRB-2026-0005-N]

Notice of Formal Determination on Records Release

AGENCY: Civil Rights Cold Case Records Review Board.

ACTION: Notice.

SUMMARY: The Civil Rights Cold Case Records Review Board received 1,051 pages of records from the National Archives and Records Administration (NARA) related to five civil rights cold case incidents to which the Review Board assigned the unique identifiers 2024-004-002, 2024-004-005, 2024-004-013, 2024-004-017, and 2024-004-019. NARA did not propose any postponements of disclosure. On January 9 and 23, 2026, the Review Board met and determined that the records should be publicly disclosed in the Civil Rights Cold Case Records Collection. By issuing this notice, the Review Board complies with the Civil Rights Cold Case Records Collection Act of 2018 that requires the Review Board to publish in the **Federal Register** its determinations on the disclosure or postponement of records in the Collection no more than 14 days after the date of its decision.

FOR FURTHER INFORMATION CONTACT: Stephannie Oriabure, Chief of Staff, Civil Rights Cold Case Records Review Board, 1800 F Street NW, Washington, DC 20405, (771) 221-0014, info@coldcaserecords.gov.

Authority: Pub. L. 115-426, 132 Stat. 5489 (44 U.S.C. 2107).

Dated: February 6, 2026.

Stephannie Oriabure,
Chief of Staff.

[FR Doc. 2026-02624 Filed 2-9-26; 8:45 am]

BILLING CODE 6820-SY-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Requirements for Approved Construction and Non-Construction Investments

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 13, 2026.

ADDRESSES: Interested persons are invited to submit comments by to Jeff Roberson, Chief Counsel, U.S. Department of Commerce, at jroberson@eda.gov or to PRAComments@doc.gov. Please reference OMB Control Number 0610-0096 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Jeff Roberson, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, via email at jroberson@eda.gov or via phone at (202) 482-1315.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be locally-driven, EDA works directly with communities and regions to help them build the capacity for economic

development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at www.eda.gov.

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. EDA may award assistance for construction and non-construction projects through its Public Works and Economic Adjustment Assistance (EAA) programs. Public Works program investments help support the construction or rehabilitation of essential public infrastructure and facilities necessary to generate or retain private sector jobs and investments, attract private sector capital, and promote vibrant economic ecosystems, regional competitiveness, and innovation. The EAA program provides a wide range of technical, planning, and infrastructure assistance in regions experiencing adverse economic changes that may occur suddenly or over time.

EDA seeks comments from the public and other Federal agencies on a proposed reinstatement of the series of checklists and templates that constitute EDA's post-approval tools for construction and non-construction projects. These checklists and templates, as well as any special conditions incorporated into the terms and conditions at the time of award, supplement the requirements that apply to EDA-funded projects.

EDA is also changing the name of the collection to reflect that it covers non-construction post award matters as well as construction post award matters.

II. Method of Collection

The checklists and templates are collected via both paper and electronic submissions. These checklists and templates, as well as any special conditions incorporated into the terms and conditions at the time of award, supplement the requirements that apply to EDA-funded projects.

As a part of this reinstatement process, EDA plans to make clarifying edits to the series of checklists and templates, thereby facilitating timely completion by the award recipient and approval by EDA. Additionally, EDA developed a collection to help recipients comply with the requirements of the Build America, Buy America provisions of the Infrastructure and Investment Jobs Act (Pub. L. 117–58); updated the environmental narrative form required for all construction projects; updated the standard terms and conditions for construction projects; developed a checklist for alternative construction methodologies (e.g., CMAR); developed a new version of its existing property reporting requirements to accommodate situations unique to Tribal recipients; and developed a new series of checklists unique to non-construction projects. Overall, due to the overall decrease in awards made by EDA compared to EDA's activities during the pandemic, none of the edits or additions are expected to increase the time burden on the respondent nor do the modifications change the type of collected information.

III. Data

OMB Control Number: 0610–0096.

Form Number(s): None.

Type of Review: Reinstatement of a previously approved collection.

Affected Public: Recipients of EDA construction (Public Works or Economic Assistance Adjustment) awards, including (1) cities or other political subdivisions of a state, including a special purpose unit of state or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (2) states; (3) institutions of higher education or a consortium of institutions of higher education; (4) public or private non-profit organizations or associations; (5) District Organizations; (6) Indian Tribes or a consortia of Indian Tribes; (7) economic development organizations; and (8) public-private partnerships for public infrastructure.

Estimated Number of Respondents: 3,500.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 7,000 hours.

Estimated Total Annual Cost to Public: \$480,200 (cost assumes application of U.S. Bureau of Labor Statistics September 2024 hourly employer costs for employee compensation for professional and related occupations of \$68.60).

Respondent's Obligation: Mandatory.
Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2026–02590 Filed 2–9–26; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–378–2025]

Approval of Subzone Status; Atlantic Veal & Lamb, LLC; Creston and Sterling, Ohio

On December 5, 2025, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Cleveland Cuyahoga County Port Authority, grantee of FTZ 40, requesting subzone status subject to the existing activation limit of FTZ 40, on behalf of Atlantic Veal & Lamb, LLC, in Creston and Sterling, Ohio.

The application was processed in accordance with the FTZ Act and

Regulations, including notice in the **Federal Register** inviting public comment (90 FR 57181, December 10, 2025). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 40Q was approved on February 6, 2026, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 40's 2,000-acre activation limit.

Dated: February 6, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-02631 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-380-2025]

Approval of Subzone Status; Oerlikon Metco (US) Inc.; Westbury, New York

On December 5, 2025, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the County of Orange, grantee of FTZ 37, requesting subzone status subject to the existing activation limit of FTZ 37, on behalf of Oerlikon Metco (US) Inc., in Westbury, New York.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (90 FR 57448, December 11, 2025). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 37H was approved on February 6, 2026, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 37's 2,000-acre activation limit.

Dated: February 6, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-02632 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Official Actions Under the Defense Priorities and Allocations System

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 13, 2026.

ADDRESSES: Interested persons are invited to submit comments by email to Nancy Kook, IC Liaison, Bureau of Industry and Security, at PRA@bis.doc.gov or to PRAComments@doc.gov. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Nancy Kook, IC Liaison, Bureau of Industry and Security, phone 202-482-2440 or by email at PRA@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Industry and Security (BIS) administers the Defense Priorities and Allocations System (DPAS) regulation which implements the priorities and allocations authority under Title I of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4501, *et seq.*), with respect to all materials, services, and facilities, including construction materials, not delegated to other Secretaries under Executive Order (E.O.) 13603, and the priorities authority of the Military Selective Service Act of 1948 (SSA) (50 U.S.C. 3816), delegated to the Secretary under E.O. 12742 with respect to all materials and facilities, including

construction materials, not delegated to other Secretaries. These materials, services, and facilities are referred to as "industrial resources."

The DPAS regulation has two principal authorities: (1) priorities authority, which implements the DPA Title I and SSA priorities authorities; and (2) allocations authority, which implements the DPA Title I allocations authority. Under the priorities authorities, the DPAS regulation establishes procedures for the placement and preferential acceptance and performance of priority rated contracts and orders, other than contracts of employment, supporting approved programs (referred to as "rated orders").

Under the allocations authorities, certain materials, services, and facilities may be allocated to promote the national defense, as defined in the DPA. Section 704 of the DPA authorizes the President to make such regulations and issue such orders as the President determines to be appropriate to carry out the provisions of the DPA. Section 705 of the DPA authorizes the President to obtain information by regulation, subpoena, or otherwise as may be necessary or appropriate to the enforcement or the administration of the Act and implementing regulations. Both the DPA and SSA provide for criminal and civil penalties for willful violation of the DPA or SSA, and any regulations, rule, or order issued under the authority of the DPA or SSA. Consistent with section 705 of the DPA, under section 700.91 of the DPAS regulation, persons are required to make, and preserve for at least three years, accurate and complete records of any transaction covered by the DPAS regulation or an official action.

In accordance with the DPAS regulation, BIS may take action under the DPAS regulation as necessary or appropriate to promote the national defense. Such actions are referred to as "official actions." Official actions issued under the priorities authorities of the DPAS regulation include the following: (1) rating authorizations, which grant specific priority rating authority (*i.e.*, authorizes placement of rated orders); (2) directives, which require a person from taking or refraining from taking certain actions under the DPAS Regulation relating to rated orders; and (3) letters of understanding, which may be used to resolve SPA requests to reflect an agreement reached by all parties related to rated orders. Official actions under the allocations authorities of the DPAS regulation are referred to as allocation orders, and include the following actions: (1) set-asides, which

require a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders; (2) directives, which require a person from take or refrain from taking certain actions in accordance with its provisions; and (3) allotments, which specify the maximum quantity of a material, service, or facility authorized for a specific use to promote the national defense. Lastly, as outlined in the DPAS regulation, BIS may conduct audits and investigations to ensure compliance with the DPAS regulation, DPA, the SSA, and related statutes, and may result in the following official actions: (1) an administrative subpoena, (2) a demand for information, or (3) an inspection authorization. BIS has not issued an allocation order in over a decade, nor has BIS issued an administrative subpoena, demand for information, or inspection authorization during the same time period. As a result, BIS does not have an Information Collection in place for these types of official actions.

Under Presidential Proclamation 10962 (“Adjusting Imports of Copper Into the United States”), dated July 30, 2025, the President found that copper input materials and high-quality copper scrap are a scarce and critical material essential to the national defense, meeting the criteria specified in section 101(b) of the DPA (90 FR 37727). With these findings, the President authorized the Secretary to use the Secretary’s delegated authority under E.O. 13603 to implement the domestic sales requirements as recommended in the “Effect of the Import of Copper Products on the U.S. National Security” report, dated June 30, 2025. This proposed Information Collection Request covers the information necessary to support the execution of official actions taken by BIS in response to the Presidential findings under section 101(b) of the DPA, as well as any future official actions issued under the DPAS regulation required to promote the national defense.

II. Method of Collection

Electronic.

III. Data

OMB Control Number: 0694–XXXX.
Form Number(s): None.

Type of Review: Regular submission.
This is a new information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: 18.

Estimated Total Annual Burden Hours: 9,000 hours.

Estimated Total Annual Cost to Public: \$396,000.

Respondent’s Obligation: Mandatory.
Legal Authority: Title I of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4501, *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Departmental PRA Compliance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2026–02578 Filed 2–9–26; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–820]

Silicon Metal From Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2023– 2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping (AD) order on silicon metal from Malaysia for the period of

review (POR) August 1, 2023, through July 31, 2024. Commerce preliminarily finds that PMB Silicon Sdn. Bhd. (PMB Silicon) did not make sales of subject merchandise at prices below normal value (NV) during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Braeden Lowe, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–9124.

SUPPLEMENTARY INFORMATION:

Background

On September 20, 2024, Commerce initiated an administrative review of the antidumping duty order on silicon metal from Malaysia, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).¹ This review covers one producer/exporter of subject merchandise (*i.e.*, PMB Silicon).²

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by 90 days,³ and on July 1, 2025, Commerce extended the time limit for completing the preliminary results of this review until November 20, 2025.⁴ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁵ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁶ On January 27, 2026, Commerce extended the time limit for completing the preliminary results of this review by an additional

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (*Initiation Notice*); see also *Silicon Metal from Malaysia: Antidumping Duty Order*, 86 FR 46677 (August 19, 2021) (*Order*).

² See *Initiation Notice*, 89 FR at 77081.

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁴ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated July 1, 2025.

⁵ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁶ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

nine days.⁷ Accordingly, the deadline for these preliminary results is now February 5, 2026. For a complete description of the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum.⁸

The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The product covered by the scope of this *Order* is silicon metal from Malaysia. For a full description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. We calculated export price in accordance with section 772(a) of the Act. We calculated NV in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice.

Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period August 1, 2023, through July 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
PMB Silicon Sdn. Bhd	0.00

Disclosure

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of

any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.⁹ Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁰ 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.¹¹

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.¹² Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues raised in the hearing will be

limited to those raised in the respective case briefs. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁴ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹⁵ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Assessment Rates

Upon completion of the final results of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If the respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.¹⁶

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by PMB Silicon for which PMB Silicon did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (*i.e.*, 12.27 percent),¹⁷ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

¹⁴ See 19 CFR 351.310(d).

¹⁵ See 19 CFR 351.303.

¹⁶ See section 751(a)(2)(C) of the Act.

¹⁷ See *Order*, 86 FR at 46678.

¹⁸ For a full description of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁷ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated January 27, 2026.

⁸ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Silicon Metal from Malaysia; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁹ See 19 CFR 351.309(c)(1)(ii); *see also* 19 CFR 351.303 (for general filing requirements).

¹⁰ 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*).

¹¹ See 19 CFR 351.309(c)(2) and (d)(2).

¹² We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹³ See *APO and Service Final Rule*.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by 751(a)(2)(C) of the Act: (1) the cash deposit rate for PMB Silicon will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review, but covered in a prior segment of the proceeding, the cash deposit rate will be the company-specific rate published for the most recently-completed segment in which it was reviewed; (3) if the exporter is not a firm covered in this review or in the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 12.27 percent, the all-others rate established in the LTFV investigation.¹⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to the liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(4).

Dated: February 4, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026–02560 Filed 2–9–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable February 10, 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 July 1, 2002, the U.S. Department of Commerce (Commerce) published the *Order* on PET film from India.¹ On August 1, 2025, Commerce published the notice of initiation of the fourth sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).²

Commerce received a notice of intent to participate in this review from Microworks America, Inc. and Mitsubishi Chemical America, Inc.—Polyester Film Division (domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i) on August 15, 2025 and August 18, 2025, respectively.³ The domestic interested parties claim to have interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as U.S. producers of the domestic like product.⁴

On August 29, 2025, Commerce received an adequate substantive response from the domestic interested parties, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from either the Government of India or a respondent interested party to this proceeding. On September 23, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative

¹ See *Notice of Countervailing Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 36139 (August 1, 2025).

³ See Microworks America, Inc.'s Letter, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Notice of Intent to Participate in Sunset Review,” dated August 15, 2025; and Mitsubishi Chemical America, Inc.—Polyester Film Division's Letter, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Notice of Intent to Participate in Sunset Review,” dated August 18, 2025.

⁴ *Id.*

⁵ See Domestic Interested Parties' Letter, “Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Substantive Response to the Notice of Initiation,” dated August 29, 2025.

⁶ See Commerce's Letter, “Sunset Reviews Initiated on August 1, 2025,” dated September 23, 2025.

¹⁹ See *Order*, 86 FR at 46678.

proceedings by 47 days.⁷ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁸ Accordingly, the deadline for these final results is now February 5, 2026.

Scope of the Order

The product covered by this *Order* is PET film from India. For the full description of the scope of the *Order*, see the Issues and Decisions Memorandum.⁹

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is contained in the accompanying Issues and Decision Memorandum.¹⁰ A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS, which is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate (percent <i>ad valorem</i>)
Ester Industries Ltd	23.21
Garware Polyester Ltd	29.45
Polyplex Corporation Ltd	18.57
All Others	25.25

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: February 4, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Rates Likely to Prevail
 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2026–02557 Filed 2–9–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–803, A–570–924]

Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates and the People's Republic of China: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on polyethylene terephthalate film, sheet, and strip (PET film) from the United Arab Emirates (UAE) and the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Reviews" section of this notice.

DATES: Applicable February 10, 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 November 10, 2008, Commerce published the *Orders* in the **Federal Register**.¹ On August 1, 2025, Commerce published the notice of initiation of these third sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930 (the Act).²

On August 15 and 18, 2025, Commerce received timely and complete notices of intent to participate in the sunset reviews from the domestic interested parties³ within the deadline specified in the 19 CFR 351.218(d)(1)(i).⁴ The domestic

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595 (November 10, 2008) (*Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 36139 (August 1, 2025).

³ The domestic interested parties are Mitsubishi Chemical America, Inc.—Polyester Film Division (Mitsubishi) and Microworks America, Inc. (Microworks).

⁴ See Microworks' Letter, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Notice of Intent to

⁷ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁸ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁹ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India," dated concurrently with, and hereby adopted by, this notice.

¹⁰ *Id.*

interested parties claimed the interested party status within the meaning of section 771(9)(C) of the Act as U.S. producers of the domestic like product.⁵ On August 22, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to participate from the domestic interested parties.⁶

On August 29, 2025, pursuant to 19 CFR 351.218(d)(3)(i), the domestic interested parties filed timely and adequate substantive responses.⁷ Commerce did not receive a substantive response from any respondent interested party. On September 23, 2025, Commerce notified the ITC that it did not receive substantive response from any respondent interested parties.⁸ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting expedited (120-day) sunset reviews of the *Orders*.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁹ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.¹⁰ Accordingly, the

deadline for these final results is now February 5, 2026.

Scope of the Orders

The product covered by these *Orders* is PET film from the UAE and China. For the full description of the scope of the *Orders*, see the Issues and Decisions Memorandum.¹¹

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.¹² A list of the topics discussed in the Issues and Decision Memorandum is attached in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 4.05 percent for the UAE and 76.72 percent for China.

Notification Regarding Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

¹¹ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates and the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹² *Id.*

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: February 4, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2026–02559 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–895]

Low Melt Polyester Staple Fiber From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that the sole producer/exporter subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review August 1, 2023, through July 31, 2024. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Nathan Araya, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3401, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2018, Commerce published in the **Federal Register** an

Participate in Sunset Review," dated August 15, 2025; Mitsubishi's Letter, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Notice of Intent to Participate in Sunset Review," dated August 18, 2025; Microworks' letter "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated August 15, 2025; and Mitsubishi's letter "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Notice of Intent to Participate in Sunset Review," dated August 18, 2025.

⁵ *Id.*

⁶ See Commerce's Letter, "Sunset Reviews Initiated on August 1, 2025," dated August 22, 2025.

⁷ See Domestic Interested Parties' Letter, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the United Arab Emirates: Substantive Response to the Notice of Initiation," dated August 29, 2025; see also Domestic Interested Parties' Letter "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from the People's Republic of China: Substantive Response to the Notice of Initiation," dated August 29, 2025.

⁸ See Commerce's Letter, "Sunset Reviews Initiated on August 1, 2025," dated September 23, 2025.

⁹ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

¹⁰ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

antidumping duty order on low melt polyester staple fiber (low melt PSF) from the Republic of Korea (Korea).¹ On August 1, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on low melt PSF from Korea.² On September 20, 2024, based on a timely request for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order*.³ The review covers one producer/exporter of the subject merchandise, Toray Advanced Materials Korea, Inc. (TAK).

On December 9, 2024, Commerce tolled the deadline for the preliminary results of this administrative review by 90 days.⁴ On June 17, 2025, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), Commerce extended the deadline for the preliminary results by 120 days until December 1, 2025.⁵ Additionally, due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁶ Finally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Accordingly, the deadline for these preliminary results is now February 5, 2026.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁸ A list of topics

included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order⁹

The merchandise subject to the *Order* is synthetic staple fibers, not carded or combed, specifically bi-component polyester fibers having a polyester fiber component that melts at a lower temperature than the other polyester fiber component. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. We calculated export price and NV in accordance with sections 772 and 773 of the Act, respectively. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for the period August 1, 2023, through July 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Toray Advanced Materials Korea, Inc	3.02

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of publication of this

notice.¹⁰ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.¹¹ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹²

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹³ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS, within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁴ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its

¹⁰ See 19 CFR 351.309(c)(1)(ii).

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 Procedures*).

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 19 CFR 351.310(d).

¹ See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Antidumping Duty Orders*, 83 FR 40752 (August 16, 2018) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 62714 (August 1, 2024).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024).

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 17, 2025.

⁶ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁷ See Memorandum, "Tolling of All Case Deadlines," dated November 24, 2025.

⁸ See Memorandum, "Decision Memorandum for the Preliminary Results of the 2023–2024 Administrative Review of the Antidumping Duty Order on Low Melt Polyester Staple Fiber from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁹ See *Order*, 83 FR at 40752.

requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, in accordance with section 751(a)(2)(A) of the Act, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.¹⁶ If a respondent's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent) in the final results of this review, we intend to calculate importer-specific assessment rate for antidumping duties based on the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).¹⁷ Where the respondent did not report entered values, in accordance with 19 CFR 351.212(b)(1), Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales.¹⁸ Commerce will calculate an estimated ad valorem importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use the per-unit assessment rate where entered values were not reported. Where an importer/customer-specific ad valorem assessment rate is not zero or *de minimis*, Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.

If either the respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to

liquidate the appropriate entries without regard to antidumping duties.¹⁹

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by TAK for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (i.e., 16.27 percent) if there is no rate for the intermediate company(ies) involved in the transaction.²⁰

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²¹ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recently-completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer is,

then the cash deposit rate will be the rate established in the completed segment for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 16.27 percent, the all-others rate established in the LTFV investigation.²² These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2) and 19 CFR 351.221(b)(4).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Recommendation

[FR Doc. 2026-02643 Filed 2-9-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Notice of Amended Final Results of Countervailing Duty Administrative Review Pursuant to Settlement; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is issuing these

¹⁵ See *APO and Service Final Rule*.

¹⁶ See 19 CFR 351.212(b)(1).

¹⁷ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁸ See 19 CFR 351.212(b)(1).

¹⁹ *Id.*, 77 FR at 8102-03; see also 19 CFR 351.106(c)(2).

²⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²¹ See section 751(a)(2)(C) of the Act.

²² See *Order*.

amended final results pursuant to a settlement agreement with Jindal Poly Films Limited (Jindal) with respect to the final results of the administrative review of the countervailing duty (CVD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India covering the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2631.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2024, Commerce published in the **Federal Register** the final results of the 2021 administrative review of the CVD order on PET film from India.¹ In the *Final Results*, Commerce calculated a total *ad valorem* subsidy rate of 116.96 percent for Jindal during the POR.²

Following the publication of the *Final Results*, Jindal filed a lawsuit with the U.S. Court of International Trade (CIT) challenging certain aspects of Commerce's *Final Results*, including: (1) Commerce's denial of its untimely extension request; (2) use of adverse facts available (AFA); and (3) selection of the AFA rate. On August 1, 2025, the CIT remanded Commerce's final results.³

On January 28, 2026, the United States and Jindal entered into an agreement to settle this dispute. Pursuant to the terms of settlement, the parties have agreed to a final assessment as discussed below. The CIT issued its order of judgement by stipulation on January 29, 2026.⁴

Assessment Rates

Consistent with the settlement agreement and January 29, 2026, order of judgement by stipulation, Commerce will instruct U.S. Customs and Border Protection (CBP) to liquidate all entries of PET film from India produced and exported by Jindal, and entered, or withdrawn from warehouse, for consumption in the United States during the POR equal to 10.51 percent

during the period January 1, 2021, through May 16, 2021, and 11.67 percent during the period May 17, 2021, through December 31, 2021.

In accordance with section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(2), Commerce has determined, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with these revised results of review.

Cash Deposit Requirements

Because Jindal has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we are not revising the cash deposit rate and will not issue revised cash deposit instructions to CBP.

Notification to Interested Parties

We are issuing this determination and publishing these amended final results in accordance with section 516(a)(e) of the Act.

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026-02633 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-192]

Erythritol From People's Republic of China: Final 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) determines that erythritol from the People's Republic of China (China) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2024, through September 30, 2024.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Hannah Lee or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1216 or (202) 482-1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 16, 2025, Commerce published the *Preliminary Determination* in the **Federal Register** and invited interested parties to comment.¹ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.² 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.³ Accordingly, the deadline for these final results is now February 4, 2026. For a complete description of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.⁴

The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and 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 erythritol from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In the Preliminary Scope Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope) in scope-specific case briefs or other written comments.⁵ We received comments

¹ See *Erythritol from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 90 FR 31962 (July 16, 2025) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

³ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁴ See Memorandum, "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Erythritol from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Erythritol

Continued

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review*, 2021, 89 FR 5490 (January 29, 2024) (*Final Results*).

² *Id.*

³ See *Jindal Poly Films Limited v. United States*, CIT No. 24-00053 Slip Op. 25-98 (August 1, 2025).

⁴ See *Jindal Poly Films Limited v. United States*, CIT No. 24-00053, ECF No. 59 (January 29, 2026).

from interested parties on the scope of the investigation as it appeared in the *Preliminary Determination*. For a summary of the product coverage comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.⁶ After analyzing these comments, we made one change to the scope of the investigation. Commerce is therefore modifying the scope language as it appeared in the *Initiation Notice* and *Preliminary Determination*. See the scope in Appendix I to this notice.

Verification

Because Commerce found that the mandatory respondents are not eligible for a separate rate, and are therefore part of the China-wide entity in this final determination, and because Commerce found that the China-wide entity has been found to be uncooperative, Commerce did not conduct verification.⁷

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by the parties in this investigation are discussed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, see Appendix II.

Changes Since the Preliminary Determination

Based on analysis of the information and comments received from interested parties for this final determination, Commerce has made a change to its preliminary separate rate determination

with respect to Baolingbao Biology Co., Ltd. (Baolingbao). We also made certain changes to the weighted-average dumping margins assigned to the China-Wide Entity and to non-examined companies that are eligible for a separate rate. For a discussion of these changes, see the Issues and Decision Memorandum.

Application of Adverse Facts Available (AFA) to the China-Wide Entity

Consistent with the *Preliminary Determination*,⁸ Commerce relied solely on the use of AFA for the China-wide entity, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), in determining the dumping rate for the China-wide entity.⁹ For this final determination, we continue to apply AFA to the China-wide entity. For further discussion, see the Issues and Decision Memorandum.

Separate Rates

Consistent with the *Preliminary Determination*, and Policy Bulletin 05.1,¹⁰ Commerce calculated combination rates for the companies that are eligible for a separate rate. In calculating the rate for separate rate companies in a non-market economy LTFV investigation, Commerce normally looks to section 735(c)(5)(A) of the Act, which pertains to the calculation of the all-others rate in a market economy LTFV investigation, for guidance. Pursuant to section 735(c)(5)(A) of the Act, normally this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for those companies individually examined, excluding zero

and *de minimis* rates, and rates based entirely under section 776 of the Act. There are no estimated weighted-average dumping margins in this final determination for individually examined companies that are not zero, *de minimis* or based entirely under section 776 of the Act. In investigations where no estimated weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the dumping margins alleged in the petition and applies the results to all other companies not individually examined.¹¹ However, for this final determination, we have calculated the estimated weighted-average dumping margin assigned to the non-examined separate rate companies based on data included in the petition and surrogate value submissions. See the Issues and Decision Memorandum for further discussion.

Combination Rates

Consistent with the *Preliminary Determination*,¹² and Policy Bulletin 05.1,¹³ Commerce calculated producer/exporter combination rates for the non-examined companies that are eligible for a separate rate in this final determination.

Final Determination

Commerce determines that the following estimated weighted-average dumping margins exist for the period April 1, 2024, through September 30, 2024:

Exporter	Producer	Weighted-average dumping margin	Cash deposit rate (adjusted for subsidy offsets)
Beijing Refine Biology Co., Ltd	Chuzhou Refine Biology Co., Ltd	85.04	84.95
Hunan Nutramax Inc	Hunan Nutramax Inc	85.04	84.95
Shandong Newnature Biotechnology Co., Ltd	Shandong Sanyuan Biotechnology Co., Ltd	85.04	84.95
Baolingbao Biology Co., Ltd	Baolingbao Biology Co., Ltd	85.04	84.86
China-Wide Entity .....	.....	* 184.26	184.26

* This rate is based on facts available with adverse inferences.

from the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 11, 2025 (Preliminary Scope Memorandum).

⁶ See Memorandum, "Final Scope Decision Memorandum," dated concurrently with this final determination (Final Scope Decision Memorandum).

⁷ See *Preliminary Determination*.

⁸ See *Preliminary Determination* PDM at 17–20.

⁹ See sections 776(a)(1) and (2)(A)–(C) and (b) of the Act.

¹⁰ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy

Bulletin 05.1), available at <https://access.trade.gov/Resources/policy/bull05-1.pdf>.

¹¹ See, e.g., *Certain Preserved Mushrooms from Spain: Final Affirmative Determination of Sales Less Than Fair Value*, 88 FR 18120 (March 27, 2023).

¹² See *Preliminary Determination*.

¹³ See Policy Bulletin 05.1.

Disclosure

Commerce intends to disclose the calculations performed in connection with this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all appropriate entries of subject merchandise, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after July 16, 2025, the date of publication in the **Federal Register** of the *Preliminary Determination*.

In accordance with section 733(d) of the Act, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse, on or after January 12, 2026, the first day provisional measures were no longer in effect, but to continue the suspension of liquidation of all entries of subject merchandise on or before January 11, 2026.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue an antidumping duty order, reinstate the suspension of liquidation under section 736(a) of the Act, and require a cash deposit of estimated antidumping duties for entries of subject merchandise in the amounts indicated above, effective on the date of publication of the ITC's affirmative final determination in the **Federal Register**. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), upon resumption of suspension of liquidation, Commerce will also instruct CBP to require a cash deposit for estimated antidumping duties for appropriate entries as follows: (1) for the producer/exporter combinations listed in the table above, the applicable cash deposit rate is listed in the table for that combination; (2) for all combinations of Chinese producers/exporters of subject merchandise that have not established eligibility for a separate rate, the cash

deposit rate will be equal to the cash deposit rate listed for the China-wide entity in the table above; and (3) for all third-country exporters of the subject merchandise that are not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination or the China-wide entity that supplied that third-country exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rates as the result of an LTFV investigation, Commerce normally adjusts the estimated weighted-average dumping margins by the amount of export subsidies countervailed in the companion countervailing duty (CVD) investigation. Accordingly, where Commerce has made a final affirmative determination of countervailable export subsidies, Commerce offsets the estimated weighted average dumping margins in the LTFV investigation by the appropriate export subsidy rate from the companion CVD investigation. As Commerce made an affirmative determination for export subsidies, we have offset the calculated estimated weighted-average dumping margins in the above table by the appropriate export subsidy rates to calculate the applicable cash deposit rates. In the companion CVD final determination, Commerce determined that Sanyuan did not benefit from export subsidies, Baolingbao had an export subsidy rate of 0.18 percent, and all-other companies had an export subsidy rate of 0.09 percent.¹⁴ With respect to the China-wide entity, as AFA, the export subsidy offset is equal to the lesser of the export subsidy rates found for any company in the CVD final determination because the source of the U.S. price in the AFA rate applied to the China-wide entity is not publicly known, *i.e.*, 0.00. Therefore, there continues to be no offset for export subsidies for the estimated weighted-average dumping margin determined for the China-wide entity.

U.S. International Trade Commission (ITC)

In accordance with section 735(d) of the Act, we will notify the ITC of this affirmative final determination of sales at LTFV. Because the final determination in this investigation is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with

material injury, by reason of imports of erythritol no later than 45 days after this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded, and suspension of liquidation will be lifted. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instructions by Commerce, antidumping duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the "Suspension of Liquidation" section.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and this notice are issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: February 4, 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 product within the scope of this investigation is erythritol, which is a sugar alcohol, commonly referred to as a polyol, typically produced by the fermentation of glucose using enzymes and yeast or yeast-like fungi (though the scope includes erythritol produced using any other feedstock or organism). Erythritol is an organic compound with the molecular formula C₄H₁₀O₄ and a Chemical Abstracts Service (CAS) registry number of 149–32–6. Other names for erythritol include meso-erythritol, (2R, 3S)-butan-1,2,3,4-tetrol, butane-1,2,3,4-tetrol, or meso-1,2,3,4-Tetrahydroxybutane.

Erythritol typically appears as a white crystalline, odorless product that rapidly dissolves in water. While erythritol is typically produced in the crystalline form or as a fine powder or in directly compressible form, the scope of this investigation covers all physical forms and grades of erythritol, including organic erythritol.

¹⁴ See Erythritol from the People's Republic of China: Final Affirmative Countervailing Duty Determination, dated concurrently with this notice.

The merchandise covered by this investigation is classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2905.49.4000. Erythritol may also enter under HTSUS subheading 2106.90.9998. Although the HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise covered by this investigation is dispositive.

Specifically excluded from the scope are certain tabletop sugar substitute products that contain erythritol as an ingredient. Tabletop sugar substitute products include erythritol as an ingredient as well as a high intensity sweetener such as monk fruit, stevia, sucralose, aspartame, and saccharin. The following tabletop sugar substitute products are excluded: finished goods packaged and labeled for retail sale or individual consumption.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Adjustments to Cash Deposit Rates for Export Subsidies
- IV. Separate Rates
- V. Changes Since the *Preliminary Determination*
- VI. Rate Selection for Separate Rate Companies
- VII. Discussion of the Issues
 - Comment 1: Sanyuan's Separate Rate Status
 - Comment 2: Application of AFA to Sanyuan as Part of the China-Wide Entity
 - Comment 3: Commerce's Placement of Factual Information on the Record
 - Comment 4: Sanyuan's Request for On-Site Verification
 - Comment 5: Baolingbao's Separate Rate Status
 - Comment 6: Baolingbao's Request to be a Voluntary Respondent
- VIII. Recommendation

[FR Doc. 2026-02562 Filed 2-9-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that large power transformers from the Republic of Korea (Korea) are not being sold in the United States at less than normal value (NV) during the

period of review (POR) August 1, 2023, through July 31, 2024. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn or Harrison Tanchuck, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0339 or (202) 482-7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2012, Commerce published in the *Federal Register* the antidumping duty order on large power transformers from Korea.¹ On September 20, 2024, based on timely requests for review, Commerce initiated this administrative review covering four companies.² We selected two mandatory respondents in this review, HD Hyundai Electric Co., Ltd. and Iljin Electric Co., Ltd.³

On December 9, 2024, Commerce tolled certain deadlines in this administrative review by 90 days.⁴ Further, due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁵ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁶ On July 16, 2025, and January 7, 2026, we extended the deadline for issuing the preliminary results of this review.⁷ Accordingly, the

deadline for these preliminary results is now February 5, 2026.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁸ A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise subject to the *Order* is large power transformers from Korea. For a complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Respondents

The Act and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any

¹ *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012) (*Order*).

² *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079, 77081 (September 20, 2024) (*Initiation Notice*).

³ *See* Memorandum, "Respondent Selection," dated October 30, 2024.

⁴ *See* Memorandum, "Tolling of Deadline for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁵ *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁶ *See* Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁷ *See* Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated July 16, 2025; *see also* Memorandum, "Extension of Deadline for

Preliminary Results of Antidumping Duty Administrative Review," dated January 7, 2026.

⁸ *See* Memorandum, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

Where the weighted-average dumping margins for individually examined respondents are zero, *de minimis*, or determined based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use “any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated . . .” In this review, Commerce preliminarily calculated a weighted-average dumping margin of zero percent for HD Hyundai Electric Co., Ltd. and Iljin Electric Co., Ltd. Therefore, we have preliminarily determined to continue to assign the estimated weighted-average dumping margins currently in effect to the non-selected companies subject to review. For a full discussion of the rates for non-selected companies, see the Preliminary Decision Memorandum.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period August 1, 2023, through July 31, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
HD Hyundai Electric Co., Ltd.	0.00
Iljin Electric Co., Ltd.	0.00
LS Electric Co., Ltd.	16.87
Hyosung Heavy Industries Corporation	4.32

Disclosure

Commerce intends to disclose its calculations performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.⁹ 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.¹⁰ 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.¹¹

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.¹² Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹³

All submission, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.¹⁴ An electronically filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

⁹ 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*).

¹⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹¹ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹² See 19 CFR 351.310(d).

¹³ See 19 CFR 351.303.

¹⁴ See *APO and Service Final Rule*, 88 FR at 67069.

Assessment Rates

Upon issuing the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), for any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we intend to calculate importer-specific *ad valorem* assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those same sales. If any respondent's weighted-average dumping margin in the final results is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(2), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's “automatic assessment” practice will apply to entries of subject merchandise during the POR produced by each respondent for which it did not know that the merchandise it sold was destined for the United States. In such instances, we will instruct CBP to liquidate those entries at the all-others rate established in the original LTFV investigation (i.e., 22.00 percent),¹⁶ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁷

For LS Electric Co., Ltd. and Hyosung Heavy Industries Corporation, the companies that were not selected for individual examination, we intend to assign an assessment rate equal to the weighted average dumping margins calculated in the final results of this review for the companies selected for mandatory review, unless that rate is zero or *de minimis*, in which case we intend to instruct CBP to liquidate relevant entries at dumping margins currently in effect.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the

¹⁶ See *Order*, 77 FR 53177.

¹⁷ See *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012).

⁹ Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs. See 19 CFR 351.309(c)(1)(ii).

assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.00 percent, the all-others rate established in the LTFV investigation.¹⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of the Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Deadline for Submission of Updated Sales and Cost Information
- IV. Scope of the *Order*
- V. Rate for Non-Selected Companies
- VI. Discussion of the Methodology
- VII. Currency Conversion
- VIII. Recommendation

[FR Doc. 2026–02646 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–011]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain crystalline silicon photovoltaic products from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable February 10, 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 February 18, 2015, Commerce published the *Order* on certain solar products from China.¹ On August 1, 2025, Commerce published the notice of initiation of the second sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218(c).²

On August 15, 2025, Commerce received a notice of intent to participate in this review from the American Alliance for Solar Manufacturing³ (the domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).⁴ The domestic interested party claims that it has interested party status within the meaning of section 771(9)(F) of the Act and 19 CFR 351.102(b)(29)(vii) as a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States.⁵

On September 2, 2025, Commerce received an adequate substantive response from the domestic interested party, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁶ Commerce did not receive a substantive response from either the Government of China or a respondent interested party to this proceeding. On September 23, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.⁷ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 36139 (August 1, 2025).

³ The American Alliance for Solar Manufacturing consists of First Solar, Inc., Hanwha Q CELLS USA, Inc., Heliene USA, Inc., Suniva, Inc., and Mission Solar Energy LLC.

⁴ See Domestic Interested Party's Letter, “Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of Intent to Participate in Sunset Review,” dated August 15, 2025.

⁵ *Id.* at 2.

⁶ See Domestic Interested Party's Letter, “Crystalline Silicon Photovoltaic Products from the People's Republic of China: Substantive Response to Notice of Initiation of Sunset Review,” dated September 2, 2025.

⁷ See Commerce's Letter, “Sunset Reviews Initiated on August 1, 2025,” dated September 23, 2025.

¹⁸ See *Order*, 77 FR 53177.

all deadlines in administrative proceedings by 47 days.⁸ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁹ Accordingly, the deadline for these final results is now February 5, 2026.

Scope of the Order

The product covered by this *Order* is certain crystalline silicon photovoltaic

products from China. For the full description of the scope of the *Order*, see the Issues and Decisions Memorandum.¹⁰

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is contained in the accompanying Issues and Decision Memorandum.¹¹ A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public

document and is on file electronically via ACCESS, which is available to registered users at <https://access.trade.gov>. In addition, complete versions of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:¹²

Company	Net countervailable subsidy rate (percent <i>ad valorem</i>)
Changzhou Trina Solar Energy Co., Ltd and its cross-owned affiliates ¹³	41.57
Wuxi Suntech Power Co., Ltd	29.72
All Others	35.65

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: February 4, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 2. Net Countervailable Subsidy Rates Likely to Prevail
 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2026–02558 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–839]

Steel Propane Cylinders From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Sahamitr Pressure Container Public Company Limited (also known as Sahamitr Pressure Container Plc.) (SMPC) made sales of steel propane cylinders from Thailand at less than normal value (NV) during the period of review (POR), August 1, 2023, through July 31, 2024. We invite interested parties to comment on these preliminary results.

Trina Solar was 39.50 percent *ad valorem*. The 33.50 percent *ad valorem* rate reported in the *Final Determination Timken Notice* was a typographical error and was incorrectly identified as the rate likely to prevail in the *First Sunset Review*. Accordingly, this sunset review applies the 39.50 percent *ad valorem* subsidy rate, plus additional subsidies found to be countervailable in the issues and decision memorandum adopted by this notice.

¹³ Cross-owned affiliates are: Trina Solar Limited; Trina Solar (Changzhou) Science & Technology Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.; Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; and Changzhou Trina PV Ribbon Materials Co., Ltd.

⁸ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁹ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

¹⁰ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China,” dated concurrently with, and hereby adopted by, this notice.

¹¹ *Id.*

¹² See *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Notice of Court Decision Not in Harmony with*

Amended Final Affirmative Countervailing Duty Determination, 82 FR 52276 (November 13, 2017) (*Final Determination Timken Notice*); “*Changzhou Trina Solar Energy Co., Ltd., et al. v. United States: Final Results of Redetermination Pursuant to Court Remand*,” dated May 1, 2017 (*Final Remand*); and *Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 85 FR 26929 (May 6, 2020) (*First Sunset Review*), and accompanying IDM. In the *Final Determination Timken Notice*, the subsidy rate likely to prevail for Changzhou Trina Solar Energy Co., Ltd. and its cross-owned affiliates (Trina Solar) was reported as both 33.50 percent *ad valorem* and 39.50 percent *ad valorem*. In the *Final Remand*, the calculated amended subsidy rate for

DATES: Applicable February 10, 2026.
FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, 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) 482–7851.
SUPPLEMENTARY INFORMATION:

Background

On August 15, 2019, Commerce published the antidumping duty order on steel propane cylinders from Thailand.¹ On August 1, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On August 28, 2024, Commerce received a timely request to conduct an administrative review of the *Order* from SMPC, and on August 30, 2024, Worthington Industries (the petitioner) requested a review of SMPC.³ On September 20, 2024, based on timely requests for review and in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order*.⁴ On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.⁵ Pursuant to section 751(a)(3)(A) of the Act, Commerce extended the deadline for the preliminary results until December 1, 2025.⁶ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁷ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance’s Antidumping and Countervailing Duty

Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁸ Accordingly, the deadline for these preliminary results is now February 5, 2026.
For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁹ A list of the topics included in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by this *Order* are steel propane cylinders from Thailand. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.¹⁰

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. Export price was calculated in accordance with section 772 of the Act. NV was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period August 1, 2023, through July 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Sahamitr Pressure Container Public Company Limited	1.32

⁸ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.
⁹ See Memorandum, “Decision Memorandum for Preliminary Results of the Administrative Review of the Antidumping Duty Order on Steel Propane Cylinders from Thailand; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).
¹⁰ See Preliminary Decision Memorandum at “Scope of the *Order*.”

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.¹¹ 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.¹² 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.¹³ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results of this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

¹¹ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).
¹² See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).
¹³ See 19 CFR 351.309(c)(2) and (d)(2).
¹⁴ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.
¹⁵ See *APO and Service Procedures*.

¹ See *Steel Propane Cylinders from the People’s Republic of China and Thailand: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Orders*, 84 FR 41703 (August 15, 2019) (*Order*).
² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 62714 (August 1, 2024).
³ See SMPC’s Letter, “Request for Antidumping Duty Administrative Review,” dated August 28, 2024; see also Petitioner’s Letter, “Request for Administrative Review of the Antidumping Duty Order,” dated August 30, 2024.
⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079, 77085 (September 20, 2024).
⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.
⁶ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated July 16, 2025.
⁷ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

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, filed electronically, using ACCESS, within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised by each party in their respective case and rebuttal briefs. An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days of the publication date of this notice. If a request for a hearing is made, parties will be notified of the time and date of the hearing.¹⁶

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any case briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

If SMPC's weighted-average dumping margin is not zero or *de minimis* (*i.e.*, less than 0.50 percent) in the final results of this review, Commerce intends to calculate importer-specific

assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.¹⁷ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. If SMPC's weighted-average dumping margin is zero or *de minimis* or where an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁸

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by SMPC for which it did not know that the merchandise was destined for the United States, we intend to instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (*i.e.*, 10.77 percent)¹⁹ if there is no rate for the intermediate company(ies) involved in the transaction.²⁰

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the company-specific cash deposit rate for SMPC will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash

deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or in the LTFV investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 10.77 percent, the rate established in the LTFV investigation of this proceeding.²¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213(h)(2) and 19 CFR 351.221(b)(4).

Dated: February 4, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

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¹⁷ See 19 CFR 351.212(b)(1).

¹⁸ See 19 CFR 351.106(c)(2); *see also* *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁹ See *Order*, 84 FR at 41704.

²⁰ For a full discussion of this practice, *see* *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁶ See 19 CFR 351.310(d).

²¹ See *Order*, 84 FR at 41704.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–859]

Mattresses From Mexico: Initiation of Circumvention Inquiry on the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Brooklyn Bedding LLC, Corsicana Mattress Company, Future Foam, Inc., FXI, Inc., Kolcraft Enterprises Inc., Leggett & Platt, Incorporated; Serta Simmons Bedding LLC, Southerland Inc.; Tempur Sealy International, Inc., the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (collectively, the requesters), the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether components of mattresses from Mexico, which are assembled or completed in the United States into mattresses, are circumventing the antidumping duty (AD) order on mattresses from Mexico.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office II Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:**Background**

On November 18, 2025, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(h), the requesters filed circumvention inquiry requests alleging that mattresses completed in the United States using components manufactured in Mexico are circumventing the *Order*¹ on mattresses from Mexico and, accordingly, should be included within the scope of the *Order*.² On December 18, 2025, we issued a supplemental questionnaire to the requesters,³ and on December 24, 2025, the requesters filed their response to our request for

information.⁴ On December 29, 2025, Ureblock S.A. de CV (Ureblock), a Mexican producer of mattresses, and its U.S. affiliate, Elements Sleep LLC (Elements), a Mexican producer of mattresses, filed comments opposing the requesters' request.⁵ On January 5, 2026, the requesters filed rebuttal comments to Ureblock and Elements' December 29, 2025 comments.⁶ On January 21, 2026, in accordance with 19 CFR 351.226(d)(1), we extended the deadline for initiation of this circumvention inquiry by 13 days, until February 5, 2026.⁷

Scope of the Order

The merchandise covered by the scope of the *Order* are mattresses from Mexico. For a complete description of the scope of the *Order*, see the Circumvention Initiation Checklist.⁸

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers mattress components exported from Mexico and further processed and completed in the United States to produce mattresses.

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." The requesters alleged circumvention pursuant to section 781(a) of the Act

(i.e., merchandise completed or assembled in the United States).

Section 781(a)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting a circumvention inquiry, under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or countervailing (CVD) order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise.

In determining whether the process of assembly or completion in the United States is minor or insignificant under section 781(a)(1)(C) of the Act, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant.⁹ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, and to reach an affirmative or negative circumvention determination based on the totality of the circumstances of the particular circumvention inquiry.¹⁰

In addition, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in the United States within

¹ See *Mattresses from India, Kosovo, Mexico, and Spain: Antidumping Duty Orders*, 89 FR 73357 (Sept. 10, 2024) (*Order*).

² See Requesters' Letter, "Request to Initiate Anti-Circumvention Inquiry With Respect to Imports of Mattress Components from Mexico Pursuant to Section 781(a) of the Act" dated November 18, 2025.

³ See Commerce's Letter, "Supplemental Questionnaire," dated December 18, 2025.

⁴ See Requesters' Letter, "Responses to Anti-Circumvention Inquiry Supplemental Questionnaire" dated December 24, 2025. In accordance with 19 CFR 351.226(d)(1)(ii), the requesters' timely response extended the deadline for initiation of this circumvention inquiry by 30 days to January 23, 2026.

⁵ See Ureblock and Elements' Letter, "Ureblock's Comments and Information on the Adequacy of the Request to Initiate an Anti-Circumvention Inquiry With Respect to Imports of Mattress Components from Mexico Pursuant to Section 781(a) of the Act," dated December 29, 2025.

⁶ See Requesters' Letter, "Response to Ureblock's Adequacy Comments and Factual Information," dated January 5, 2026.

⁷ See Memorandum, "Extension of Circumvention Inquiry Initiation Deadline," dated January 21, 2026.

⁸ For a complete description of the scope of the *Order*, see Checklist, "Mattresses from Mexico Order" (Circumvention Initiation Checklist).

⁹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994) (SAA), at 893.

¹⁰ See, e.g., *Hydrofluorocarbon Blends from the People's Republic of China: Final Affirmative Determination of Circumvention with Respect to R–410B, R–407G, and a Certain Custom Blend from the People's Republic of China*, 89 FR 56848 (July 11, 2024) and the accompanying Issues and Decision Memorandum at Comment 4.

the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components products in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order.

Analysis

Based on our analysis of requesters' circumvention request, Commerce determines that the requesters have satisfied the criteria under 19 CFR 351.226(c) to warrant the initiation of circumvention inquiries of the *Order*. For a full discussion of the basis for our decision to initiate these circumvention inquiries, see the Circumvention Initiation Checklist.¹¹ As explained in the Circumvention Initiation Checklist, the information provided by the requesters warrants initiating these circumvention inquiries on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.¹²

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue a questionnaire to solicit information from producers and exporters in Mexico concerning their shipments to the United States and the origin of any mattress components being further processed into merchandise subject to the *Order*.

Respondent Selection

Commerce intends to base respondent selection on quantity and value (Q&V)

¹¹ See Circumvention Initiation Checklist.

¹² See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

questionnaire responses that Commerce intends to issue to each potential respondent for which there is complete address information on the record. Additionally, Commerce intends to place the Q&V questionnaire on the record within five days of the publication of the initiation notice. Comments regarding the Q&V data and respondent selection should be submitted within seven days after placement of the Q&V data on the record of the inquiry. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify CBP of the initiation of this circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Order*, and to apply the cash deposit rate that would be applicable if the product was determined to be covered by the scope of the *Order*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(a) of the Act, Commerce determines that the requesters' requests for this circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether certain imports of mattress components from Mexico, and further processed and completed in the United States to produce mattresses, are circumventing the *Order*. In addition, we have included a description of the products that are the subject of this inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry as provided above and in the accompanying

Circumvention Initiation Checklist.¹³ In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary circumvention determination within 150 days from the date of publication of the notice of initiation of a circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.226(d)(1)(iii).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–02636 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sales of hydrofluorocarbon blends (HFC blends) from the People's Republic of China (China) were made at less than normal value (NV) during the period of review (POR) August 1, 2023, through July 31, 2024. In addition, we are making a preliminary determination of no shipments for one company. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Caroline Carroll, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4948.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the **Federal Register** an antidumping duty (AD) order on HFC

¹³ See Circumvention Initiation Checklist.

blends from China.¹ On September 20, 2024, based on a timely request for review from the American HFC Coalition,² in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering 21 exporters of the subject merchandise.³

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by 90 days.⁴ On July 17, 2025, Commerce extended the deadline for the preliminary results of this administrative review by 111 days.⁵ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁶ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Finally, on January 2, 2026, Commerce extended the deadline for the preliminary results by nine days.⁸ Accordingly, the deadline for these preliminary results is now February 5, 2026.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁹ 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>. A list of the topics discussed in the Preliminary Decision Memorandum is attached in Appendix I of this notice.

Scope of the Order

The products covered by the *Order* are shipments of HFC blends from China. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.¹⁰ Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate calculated for the review period.¹¹ Therefore, for an administrative review to be conducted, there must be a suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the AD assessment rate calculated for the POR.¹²

On October 21, 2024, Zhejiang Yonghe Refrigerant Co., Ltd. (Zhejiang Yonghe) reported that it made no shipments of subject merchandise to the United States during the POR.¹³ Based on the no-shipment certification and information obtained from CBP,¹⁴ we preliminarily determine that Zhejiang Yonghe did not have any shipments of subject merchandise to the United States during the POR.

Consistent with Commerce's practice in non-market economy (NME) cases, we have not rescinded this review with respect to Zhejiang Yonghe but will continue our review of this company and issue instructions to CBP based on the final results of the review.¹⁵

¹⁰ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut- to Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

¹¹ See 19 CFR 351.212(b)(1).

¹² See 19 CFR 351.213(d)(3).

¹³ See Zhejiang Yonghe's Letter, "Submission of Statement of No Shipment," dated October 21, 2024.

¹⁴ See Memorandum, "Release of U.S. Customs and Border Protection Entry Data," dated October 23, 2024.

¹⁵ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011) (*Non-Market Economy*

Preliminary Affiliation and Single Entity Determination

Based on record evidence in this review, on July 28, 2025, we preliminarily determined that: (1) the following companies are affiliated, pursuant to section 771(33)(F) of the Tariff Act of 1930, as amended (the Act): Zhejiang Sanmei Chemical Industry Co., Ltd. (Sanmei), Jiangsu Sanmei Chemical Ind. Co., Ltd. (Jiangsu Sanmei), and Fujian Qingliu Dongying Chemical Ind. Co., Ltd. (Fujian Qingliu); and (2) pursuant to 19 CFR 351.401(f)(1)–(2), Sanmei, Jiangsu Sanmei, and Fujian Qingliu should be collapsed and treated as a single entity (collectively, Sanmei). For additional information, see the Preliminary Affiliation and Collapsing Memorandum.¹⁶

Separate Rate

Commerce preliminarily determines that Sanmei, the only company individually examined in this review, is eligible to receive a separate rate.¹⁷

China-Wide Entity

Under Commerce's policy regarding the conditional review of the China-wide entity,¹⁸ the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review, and the entity's rate (*i.e.*, 216.37 percent) is not subject to change.¹⁹ Commerce considers the companies under review listed in Appendix II to this notice, which did not file a separate rate application or demonstrate separate rate eligibility, to be part of the China-wide entity.²⁰

Assessment Notice); see also *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2019–2020*, 86 FR 33988 (June 28, 2021).

¹⁶ See Memorandum, "Preliminary Affiliation and Collapsing Memorandum," dated July 29, 2025 (Preliminary Affiliation and Collapsing Memorandum).

¹⁷ See Preliminary Decision Memorandum at "Separate Rates."

¹⁸ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

¹⁹ See *Order*.

²⁰ See *Initiation Notice*, 89 FR at 77080 ("All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.").

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See HFC Coalition's Letter, "Request for Administrative Review," dated August 30, 2024.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (*Initiation Notice*).

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of 2023–2024 Antidumping Duty Administrative Review," dated July 17, 2025.

⁶ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁷ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁸ See Memorandum, "Second Extension of Deadline for Preliminary Results of 2023–2024 Antidumping Duty Administrative Review," dated January 2, 2026.

⁹ See Memorandum, "Decision Memorandum for the Preliminary Results of the 2023–2024 Antidumping Duty Administrative Review of Hydrofluorocarbon Blends from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export price in accordance with section 772 of the Act. Because China is an NME country

within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.²¹

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period August 1, 2023, through July 31, 2024:

Exporter	Weighted-average dumping margin (percent)
Zhejiang Sanmei Chemical Industry Co., Ltd.; Jiangsu Sanmei Chemical Ind. Co., Ltd.; Fujian Qingliu Dongying Chemical Ind. Co., Ltd	182.61

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the date of the publication of this notice.²² Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.²³ Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.²⁴ All briefs must be filed electronically using ACCESS.²⁵ An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.²⁶ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination

in this review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Hearing requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce will inform interested parties of the scheduled date for the hearing.²⁸

Final Results of Review

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised in any case briefs, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise

covered by this review and for future deposits of estimated duties, where applicable.²⁹

For Sanmei, Commerce calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for Sanmei's examined sales to the total entered value of those sales. Where either a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.³⁰

Pursuant to Commerce's assessment practice,³¹ for entries that were not reported in the U.S. data submitted by Sanmei, we will instruct CBP to liquidate such entries at the China-wide rate (*i.e.*, 216.37 percent).³² Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter's CBP case number during the POR will be liquidated at the dumping margin assigned to the China-wide entity.

For the companies listed in Appendix II found to be part of the China-wide entity, we will instruct CBP to liquidate all entries of subject merchandise during the POR exported by these companies at the China-wide rate of 216.37 percent. Further, for Zhejiang Yonghe, the company we preliminarily determined to have no shipments, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from

²¹ See Preliminary Decision Memorandum at "Discussion of the Methodology."

²² See 19 CFR 351.309(c); *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).

²³ See 19 CFR 351.309(d).

²⁴ See 19 CFR 351.309(c)(2) and (d)(2).

²⁵ See 19 CFR 351.303.

²⁶ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²⁷ See APO and Service Final Rule.

²⁸ See 19 CFR 351.310(d).

²⁹ See section 751(a)(2)(C) of the Act.

³⁰ See 19 CFR 351.212(b)(1).

³¹ See Non-Market Economy Assessment Notice, 76 FR at 65694.

³² See Order, 81 FR at 55438.

warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for Sanmei, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this administrative review (except, if the rate is zero or *de minimis*, then a cash deposit rate of zero will be required); (2) for previously examined exporters not listed above that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently-completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.*, 216.37 percent); and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(d)(4), and 19 CFR 351.221(b)(4).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

Appendix II

Companies Considered To Be Part of the China-Wide Entity

1. Best Inc. Limited
2. Changzhou Vista Chemical Co., Ltd.
3. Daikin Fluorochemicals (China) Co., Ltd.
4. Dongyang Weihua Refrigerants Co., Ltd.
5. Hangzhou Icetop Refrigeration Co., Ltd.
6. ICool Chemical Co. Ltd.
7. Oasis Chemical Co., Limited
8. Qingdao Shingchem New Material Co.
9. Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.
10. Superfy Industrial Limited
11. Tianjin Synergy Gases Products, Co., Ltd.
12. Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.
13. Weitron International Refrigeration Equipment Co., Ltd.
14. Yangfar Industry Co., Ltd.
15. Zhejiang Hoating Lighting Co., Ltd.
16. Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd.
17. Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.
18. Zhejiang Zhonglan Refrigeration Technology Co., Ltd.

[FR Doc. 2026–02640 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–170, C–570–171]

Disposable Aluminum Containers, Pans, Trays, and Lids From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from the Aluminum Foil Containers

Manufacturers Association (AFCMA) and the following individual members of AFCMA, Durable Packaging International; D&W Fine Pack, LLC; Handi-foil Corp.; Penny Plate, LLC; Reynolds Consumer Products, LLC; Shah Foil Products, Inc.; Smart USA, Inc.; and Trinidad/Benham Corp. (collectively, the requesters), the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether imports of disposable aluminum containers, pans, trays, and lids (aluminum containers) completed in the United Arab Emirates (the UAE) using aluminum foil manufactured in the People's Republic of China (China), are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on aluminum containers from China.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT:

Justin Enck at (202) 482–1614 and Shawn Gregor at (202) 482–3226, Trade Remedy Counseling and Initiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2026, pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(i), the requesters filed a circumvention inquiry request alleging that aluminum containers completed in the UAE using aluminum foil manufactured in China are circumventing the AD and CVD orders on aluminum containers from China¹ and, accordingly, should be included within the scope of the *Orders*.²

On January 20 and 27, 2026, we issued supplemental questionnaires to the requesters.³ On January 21 and 28, 2026, the requesters filed their responses to our requests for additional

¹ See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 90 FR 19467 (May 8, 2025); see also *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Antidumping and Countervailing Duty Orders; Correction*, 90 FR 21751 (May 21, 2025) (collectively, *Orders*).

² See Requesters' Letter, "Request for Circumvention Ruling Pursuant to Section 781(b), As Amended," dated January 6, 2026 (Circumvention Request).

³ See Commerce's Letters, "United Arab Emirates Circumvention Inquiry Request Supplemental Questionnaire," dated January 20, 2026, and "United Arab Emirates Circumvention Inquiry Request Second Supplemental Questionnaire," dated January 27, 2026.

information.⁴ On January 26, 2026, Kari-Out LLC dba Kariout Co. (Kari-Out), a U.S. importer of aluminum containers, filed comments in opposition to the domestic interested parties' request.⁵ On January 28, 2026, the domestic interested parties also filed rebuttal comments to Kari-Out's January 26, 2026 comments.⁶

Scope of the Orders

The merchandise subject to the *Orders* is disposable aluminum containers, pans, trays, and lids produced primarily from flat-rolled aluminum. The subject merchandise includes aluminum containers regardless of shape or size and whether or not wrinkled or smooth. For a full description of the scope of the *Orders*, see the Circumvention Initiation Checklist.⁷

Merchandise Subject to the Circumvention Inquiry

The circumvention inquiry covers aluminum containers completed in the UAE using Chinese-origin aluminum foil that are subsequently exported from the UAE to the United States.

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." The requesters alleged circumvention pursuant to section 781(b) of the Act (merchandise completed or assembled in other foreign countries).

Section 781(b)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting a circumvention inquiry, under section 781(b)(1) of the Act, Commerce relies on the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an AD or CVD order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or is produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in section (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the AD or CVD order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order.

In determining whether the process of assembly or completion in a foreign country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce to consider: (A) the level of investment in the foreign country; (B) the level of research and development in the foreign country; (C) the nature of the production process in the foreign country; (D) the extent of production facilities in the foreign country; and (E) whether or not the value of processing performed in the foreign country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a foreign country is minor or insignificant.⁸ Accordingly, Commerce will evaluate each of these five factors as they exist in the foreign country, depending on the particular circumvention scenario.

In addition, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a foreign country within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern

of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise that was shipped to the foreign country is affiliated with the person who, in the foreign country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the foreign country have increased after the initiation of the investigation that resulted in the issuance of such order.

Analysis

Based on our analysis of the requesters' circumvention inquiry request, we determine that they have satisfied the criteria under 19 CFR 351.226(c), and thus, pursuant to 19 CFR 351.226(d)(1)(iii), we are initiating the requested circumvention inquiry. For a full discussion of the basis for our decision to initiate the circumvention inquiry, see the Circumvention Initiation Checklist. As explained in the Circumvention Initiation Checklist, the information provided by the requesters warrants initiating the circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.⁹

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to solicit information from certain companies in the UAE concerning their production of aluminum containers and their shipments thereof to the United States.

Respondent Selection

Commerce intends to base respondent selection on U.S. Customs and Border Protection (CBP) data. Commerce intends to place the CBP data on each record within five days of the publication of this initiation notice, which will be available on Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. Comments regarding the CBP data and respondent selection should be submitted within seven days after placement of the CBP data on the record of the relevant inquiry.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to

⁴ See Requesters' Letters, "Petitioners' Response to the U.S. Department of Commerce's January 20, 2026 Supplemental Questionnaire," dated January 21, 2026, and "Petitioners' Response to the U.S. Department of Commerce's January 27, 2026 Supplemental Questionnaire," dated January 28, 2026 (Requesters' January 28, 2026, Submission).

⁵ See Kari-Out's Letter, "Comments and Factual Information Regarding Circumvention Inquiry Request on the United Arab Emirates," dated January 26, 2026.

⁶ See Requesters' January 28, 2026, Submission.

⁷ See Checklist, "Aluminum Containers Completed in the United Arab Emirates Circumvention Initiation Checklist," dated concurrently with, and hereby adopted by, this notice (Circumvention Initiation Checklist), at Attachment I.

⁸ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994), at 893.

⁹ See, e.g., *Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty Order*, 88 FR 74150 (October 30, 2023).

Commerce's requests for information may result in the application of facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify CBP of the initiation and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rates that would be applicable if the products were determined to be covered by the scope of the *Orders*.

Should Commerce issue affirmative preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4). In the event that Commerce issues affirmative preliminary or final circumvention determinations that the products are circumventing the *Orders*, Commerce will instruct CBP to continue the suspension of liquidation of previously suspended entries and to apply the applicable cash deposit rate. Commerce will also instruct CBP to begin the suspension of liquidation and application of cash deposits for any unliquidated entries not yet suspended, entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice of initiation of the circumvention inquiry pursuant to paragraphs (l)(2)(ii) and (l)(3)(ii). In addition, pursuant to paragraphs (l)(2)(iii)(A) and (l)(3)(iii)(A), Commerce may instruct CBP to begin the suspension of liquidation and application of cash deposits for any unliquidated entries not yet suspended, entered, or withdrawn from warehouse, for consumption, prior to the date of initiation of the circumvention inquiry, but not for such entries prior to November 4, 2021, the effective date of these provisions in the *Final Rule*.¹⁰ These rules will not affect CBP's authority to take any additional action with respect to the suspension of liquidation or related measures for these entries, as stated in 19 CFR 351.226(l)(5).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(b) of the Act, Commerce determines that the requesters' request for this circumvention inquiry satisfies

the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether imports of aluminum containers completed in and exported from the UAE using aluminum foil manufactured in China are circumventing the *Orders*. In addition, we have included a description of the products that are subject to this inquiry, and an explanation of Commerce's decision to initiate the inquiry as provided in the accompanying Circumvention Initiation Checklist.¹¹

In accordance with 19 CFR 351.226(e)(1), unless the circumvention inquiry is rescinded, in whole or in part, or extended, Commerce intends to issue its preliminary circumvention determination no later than 150 days from the date of publication of the notice of initiation of this circumvention inquiry in the **Federal Register**. Furthermore, in accordance with section 781(f) of the Act and 19 CFR 351.226(e)(2), unless the circumvention inquiry is rescinded, in whole or in part, or extended, Commerce intends to issue its final determination within 300 days from the date of publication of the notice of initiation of the circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(b) of the Act, and 19 CFR 351.226(d)(1)(iii).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–02642 Filed 2–9–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010, A–583–853]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China and Taiwan: Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain crystalline silicon photovoltaic products (solar products) from the People's Republic of

China (China) and Taiwan would be likely to lead to continuation or recurrence of dumping, at the levels indicated in the “Final Results of Sunset Reviews” section of this notice.

DATES: Applicable February 10, 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 February 18, 2015, Commerce published the *Orders* in the **Federal Register**.¹ On August 1, 2025, Commerce published the notice of initiation of these second sunset reviews of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).²

On August 15, 2025, Commerce received timely and complete notices of intent to participate in the sunset reviews from the domestic interested party³ within the deadline specified in the 19 CFR 351.218(d)(1)(i).⁴ The domestic interested party claimed the interested party status within the meaning of section 771(9)(E)⁵ of the Act as a coalition of U.S. producers of the domestic like product, the majority of whom produce the domestic like product.⁶ On August 22, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it had received a notice of intent to

¹ See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 8592 (February 18, 2015) (*China Order*) and *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order*, 80 FR 8596 (February 18, 2015) (*Taiwan Order*) (collectively, *Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 36139 (August 1, 2025).

³ The domestic interested party is the American Alliance for Solar Manufacturing, whose individual members are First Solar, Inc., Hanwha Q CELLS USA, Inc., Heliene USA Inc., Suniva, Inc., and Mission Solar Energy LLC.

⁴ See Domestic Interested Party's Letter, “Crystalline Silicon Photovoltaic Products from the People's Republic of China: Notice of Intent to Participate in Sunset Review,” dated August 15, 2025 and “Crystalline Silicon Photovoltaic Products from Taiwan: Notice of Intent to Participate in Sunset Review,” dated August 15, 2025.

⁵ The domestic interested party claimed 771(9)(F) in their notice of intent to participate but described 771(9)(E). We are treating them as 771(9)(E) as a coalition of producers of the domestic like product.

⁶ *Id.* at 2.

¹⁰ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52345 (September 20, 2021) (*Final Rule*).

¹¹ See Circumvention Initiation Checklist.

participate from the domestic interested party.⁷

On September 2, 2025, pursuant to 19 CFR 351.218(d)(3)(i), the domestic interested party filed a timely and adequate substantive response.⁸ Commerce did not receive a substantive response from any respondent interested party. On September 23, 2025, Commerce notified the ITC that it did not receive substantive response from any respondent interested parties.⁹ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce is conducting an expedited (120-day) sunset review of the *Orders*.

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.¹⁰ 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.¹¹ Accordingly, the deadline for these final results is now February 5, 2026.

Scope of the Orders

The product covered by these *Orders* is solar products from China and Taiwan. For the full description of the scope of the *Orders*, see the Issues and Decisions Memorandum.¹²

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or

recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins likely to prevail if the *Orders* were to be revoked, is provided in the Issues and Decision Memorandum.¹³ A list of the topics discussed in the Issues and Decision Memorandum is attached in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1), and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average dumping margins up to 165.04 percent for China and 27.55 percent for Taiwan.

Notification Regarding Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*

IV. History of the *Orders*

V. Legal Framework

VI. Discussion of the Issues

1. Likelihood of Continuation or Recurrence of Dumping
2. Magnitude of the Margins of Dumping Likely to Prevail

VII. Final Results of Sunset Reviews

VIII. Recommendation

[FR Doc. 2026–02634 Filed 2–9–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–833]

Utility Scale Windtowers From Indonesia: Preliminary Results and Rescission, In Part, of the Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that utility scale wind towers (wind towers) from Indonesia were not being sold in the United States at prices below normal value during the period of review (POR), August 1, 2023, through July 31, 2024. Additionally, we are rescinding this review, in part, with respect to six companies which had no suspended entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Katie Smith, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0557, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2020, Commerce published in the **Federal Register** an antidumping duty (AD) order on wind towers from Indonesia.¹ On August 1, 2024, Commerce published in the **Federal Register** a notice of

⁷ See Commerce's Letter, "Sunset Reviews Initiated on August 1, 2025," dated August 22, 2025.

⁸ See Domestic Interested Party's Letter, "Crystalline Silicon Photovoltaic Products from the People's Republic of China: Substantive Response to Notice of Initiation of Sunset Review," dated September 2, 2025; see also Domestic Interested Party's Letter "Crystalline Silicon Photovoltaic Products from Taiwan: Substantive Response to Notice of Initiation of Sunset Review," dated September 2, 2025.

⁹ See Commerce's Letter, "Sunset Reviews Initiated on August 1, 2025," dated September 23, 2025.

¹⁰ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

¹¹ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

¹² See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders on Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China and Taiwan," dated concurrently with, and hereby adopted by, this notice.

¹³ *Id.*

¹ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 FR 52546 (August 26, 2020) (*Order*), as corrected in *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders*, 85 FR 56213 (September 11, 2020).

opportunity² to request an administrative review of the AD order on wind towers from Indonesia.³ On September 20, 2024, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the Order.⁴

On December 10, 2024, Commerce tolled certain deadlines in this administrative proceeding by 90 days.⁵ On July 1, 2025, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), Commerce extended the deadline for the preliminary results by 120 days until December 1, 2025.⁶ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁷ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁸ Accordingly, the deadline for these preliminary results is now February 5, 2026.

On January 12, 2026, Commerce notified interested parties of our intent to rescind this administrative review with respect to six companies that have no reviewable suspended entries.⁹

For a complete description of the events that followed the initiation of this investigation, see the Preliminary

Decision Memorandum.¹⁰ A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via 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 Order¹¹

The merchandise covered by the scope of this Order is wind towers from Indonesia.¹² For a complete description of the scope of the Order, see the Preliminary Decision Memorandum.

Rescission of Administrative Review, In Part

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review, in whole or in part, if a company covered by the review had no recorded entries of subject merchandise during the POR.¹³ Based on our analysis of CBP information, we preliminarily determine that six companies listed in the Initiation Notice had no recorded entries of subject merchandise during the POR. On January 12, 2026, Commerce notified all interested parties of its intent to rescind this review, in part, with respect to these six companies.¹⁴ No interested party commented on the Intent to Rescind Memorandum. As a result, we are rescinding this review, in part, with respect to six companies listed in Appendix II of this notice. The administrative review remains active with respect to one company, PT. Kenertec Power System (Kenertec).

¹⁰ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Utility Scale Wind Towers from Indonesia; 2023–2024," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

¹¹ See Order, 85 FR 52547–52548

¹² At the request of U.S. Customs and Border Protection (CBP), Commerce added the Harmonized Tariff Schedule Of the United States (HTSUS) subheadings 7308.20.0030 and 7308.20.0035 to the scope to reflect the updates to the HTSUS. See Memorandum, "Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File," dated January 12, 2026.

¹³ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

¹⁴ See Intent to Rescind Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. We calculated constructed export prices and NV in accordance with sections 772 and 773 of the Act, respectively. For a full description of the methodology underlying our preliminary results of review, see the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margin for the period August 1, 2023, through July 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
PT. Kenertec Power System	0.00

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results of this administrative review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the Federal Register, in accordance with 19 CFR 351.224(b).

Verification

Commerce received a timely request from the Wind Tower Trade Coalition (the petitioner) to verify the information submitted in this administrative review, pursuant 19 CFR 351.307(b)(1)(v).¹⁵ As provided in section 782(i) of the Act, Commerce intends to verify the information reported by Kenertec prior to issuing the final results of this review.

Public Comment

Because Commerce intends to conduct verification of the questionnaire responses of Kenertec, interested parties will be notified of the deadline for the submission of case briefs at a later date.¹⁶ Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than seven days after the date on which the verification report is issued in this administrative review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case

¹⁵ See Petitioner's Letter, "Request for Verification," dated December 30, 2024.

¹⁶ See 19 CFR 351.303 (for general filing requirements).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 62714 (August 1, 2024).

³ See *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 85 FR 52546 (August 26, 2020) (Order), as corrected in *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders*, 85 FR 56213 (September 11, 2020).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (Initiation Notice).

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 12, 2024.

⁶ See Memorandum, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated July 1, 2025.

⁷ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁸ See Memorandum, "Tolling of All Case Deadlines," dated November 24, 2025.

⁹ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated January 12, 2026 (Intent to Rescind Memorandum).

briefs.¹⁷ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.

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.¹⁸ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Hearing requests should contain: (1) the requesting party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.¹⁹ Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed via ACCESS.²⁰ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²¹

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in written case briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon completion of the final results, in accordance with section 751(a)(2)(A) of the Act, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.

Where a respondent's weighted-average dumping either is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero percent or *de minimis*, Commerce's practice is to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.²² Thus, if Commerce continues to calculate a weighted-average dumping margin of zero percent for Kernetec in the final results of this review, it will instruct CBP to liquidate entries of Kernetec's subject merchandise during the POR without regard to antidumping duties.

However, if Kernetec's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates for antidumping duties based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).²³ Where the respondent did not report entered values, in accordance with 19 CFR 351.212(b)(1), Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales.²⁴ Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis*; however, Commerce will use the per-unit assessment rate where entered values were not reported. Where an importer/customer-specific *ad valorem*

assessment rate is not zero or *de minimis*, Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Kenertec for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate established in the original less-than-fair-value (LTFV) investigation (i.e., 8.53 percent),²⁵ if there is no rate for the intermediate company(ies) involved in the transaction.²⁶

For the six companies for which the review is rescinded with these preliminary results, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the POR, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP for the rescinded companies no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.²⁷ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the publication date of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed in

¹⁷ 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*).

¹⁸ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁹ See 19 CFR 351.310(d).

²⁰ See 19 CFR 351.303.

²¹ See *APO and Service Final Rule*.

²² *Id.*, 77 FR at 8102–03; see also 19 CFR 351.106(c)(2).

²³ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

²⁴ See 19 CFR 351.212(b)(1).

²⁵ See *Order*, 85 FR 52547.

²⁶ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²⁷ See section 751(a)(2)(C) of the Act.

the final results of this review will be equal to the weighted-average dumping margins established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review, but covered in a prior segment of the proceeding, the cash deposit rate will be the company-specific rate published for the most recently-completed segment in which it was reviewed; (3) if the exporter is not a firm covered in this review or in the original LTFV investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.50 percent, the all-others rate established in the LTFV investigation.²⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to the liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 651.213(d)(3), 19 CFR 351.213(h)(2) and 351.221(b)(4).

Dated: February 05, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Rescission of Review, In Part
- V. Discussion of the Methodology
- VI. Currency Conversion
- VII. Recommendation

²⁸ See Order, 85 FR 52547.

Appendix II

List of Companies for Which the Administrative Review Has Been Rescinded

1. GE Indonesia
2. GE Renewable Energy
3. General Electric Indonesia
4. Korindo Wind
5. Nordex SE
6. PT. Siemens Gamesa Renewable Energy

[FR Doc. 2026-02638 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-455-807]

Mattresses From Poland: Initiation of Circumvention Inquiry on the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Brooklyn Bedding LLC; Carpenter Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Tempur Sealy International, Inc.; the International Brotherhood of Teamsters; and United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO (collectively, the requesters), the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether components of mattresses from Poland, which are assembled or completed in the United States into mattresses, are circumventing the antidumping duty (AD) order on mattresses from Poland.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office II Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3936.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2025, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(h), the requesters filed circumvention inquiry requests alleging that mattresses completed in the United States using components manufactured in Poland are circumventing the Order¹

¹ See *Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan: Antidumping Duty Orders*, 89 FR 56851 (July 11, 2024) (Order).

on mattresses from Poland and, accordingly, should be included within the scope of the Order.² On December 18, 2025, we issued a supplemental questionnaire to the requesters,³ and on December 24, 2025, the requesters filed their response to our request for information.⁴ On January 21, 2026, in accordance with 19 CFR 351.226(d)(1)(ii), we extended the deadline for initiation of this circumvention inquiry by 13 days, until February 5, 2026.⁵

Scope of the Order

The merchandise covered by the scope of the Order are mattresses from Poland. For a complete description of the scope of the Order, see the Circumvention Initiation Checklist.⁶

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers mattress components exported from Poland and further processed and completed in the United States to produce mattresses.

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." The requesters alleged circumvention pursuant to section 781(a) of the Act (*i.e.*, merchandise completed or assembled in the United States).

Section 781(a)(1) of the Act provides that Commerce may find circumvention

² See Requesters' Letter, "Request to Initiate Anti-Circumvention Inquiry With Respect to Imports of Mattress Components from Poland Pursuant to Section 781(a) of the Act" dated November 18, 2025.

³ See Commerce's Letter, "Supplemental Questionnaire," dated December 18, 2025.

⁴ See Requesters' Letter, "Responses to Anti-Circumvention Inquiry Supplemental Questionnaire" dated December 24, 2025. In accordance with 19 CFR 351.226(d)(1)(ii), the requesters' timely response extended the deadline for initiation of this circumvention inquiry by 30 days to January 23, 2026.

⁵ See Memorandum, "Extension of Circumvention Inquiry Initiation Deadline," dated January 21, 2026.

⁶ For a complete description of the scope of the Order, see Checklist, "Mattresses from Poland Order" (Circumvention Initiation Checklist).

of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting a circumvention inquiry, under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or countervailing (CVD) order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise.

In determining whether the process of assembly or completion in the United States is minor or insignificant under section 781(a)(1)(C) of the Act, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant.⁷ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, and to reach an affirmative or negative circumvention determination based on the totality of the circumstances of the particular circumvention inquiry.⁸

In addition, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in the United States within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B)

whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components products in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order.

Analysis

Based on our analysis of requesters' circumvention request, Commerce determines that the requesters have satisfied the criteria under 19 CFR 351.226(c) to warrant the initiation of circumvention inquiries of the *Order*. For a full discussion of the basis for our decision to initiate these circumvention inquiries, see the Circumvention Initiation Checklist.⁹ As explained in the Circumvention Initiation Checklist, the information provided by the requesters warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.¹⁰

Consistent with the approach in the prior circumvention inquiries that were initiated on a country-wide basis, Commerce intends to issue a questionnaire to solicit information from producers and exporters in Poland concerning their shipments to the United States and the origin of any mattress components being further processed into merchandise subject to the *Order*.

Respondent Selection

Commerce intends to base respondent selection on quantity and value (Q&V) questionnaire responses that Commerce intends to issue to each potential respondent for which there is complete address information on the record.

⁹ See Circumvention Initiation Checklist.

¹⁰ See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

Additionally, Commerce intends to place the Q&V questionnaire on the record within five days of the publication of the initiation notice. Comments regarding the Q&V data and respondent selection should be submitted within seven days after placement of the Q&V data on the record of the inquiry. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify CBP of the initiation of this circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Order*, and to apply the cash deposit rate that would be applicable if the product was determined to be covered by the scope of the *Order*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(a) of the Act, Commerce determines that the requesters' requests for this circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether certain imports of mattress components from Poland, and further processed and completed in the United States to produce mattresses, are circumventing the *Order*. In addition, we have included a description of the products that are the subject of this inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry as provided above and in the accompanying Circumvention Initiation Checklist.¹¹ In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its preliminary circumvention

¹¹ See Circumvention Initiation Checklist.

⁷ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994) (SAA), at 893.

⁸ See, e.g., *Hydrofluorocarbon Blends from the People's Republic of China: Final Affirmative Determination of Circumvention with Respect to R410B, R–407G, and a Certain Custom Blend from the People's Republic of China*, 89 FR 56848 (July 11, 2024) and the accompanying Issues and Decision Memorandum at Comment 4.

determination within 150 days from the date of publication of the notice of initiation of a circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.226(d)(1)(iii).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026-02637 Filed 2-9-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-863]

Forged Steel Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Both-Well Steel Fittings Co., Ltd sold forged steel fittings from Taiwan in the United States below normal value (NV) during the period of review (POR), September 1, 2023, through August 31, 2024. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5973.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2018, Commerce published the antidumping duty order on forged steel fittings from Taiwan.¹ On September 3, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On October 17, 2024, based on timely

¹ See *Forged Steel Fittings from Taiwan: Antidumping Duty Order*, 83 FR 48280 (September 24, 2018) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join the Annual Inquiry Service List*, 89 FR 71254 (September 3, 2024).

requests for review and in accordance with 19 CFR 351.221(c)(1)(i), Commerce published the initiation of an administrative review of the *Order*.³ This review covers one exporter of the subject merchandise, Both-Well Steel Fittings Co., Ltd (Both-Well).⁴

On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.⁵ On August 26, 2025, we extended the deadline by 37 days.⁶ Additionally, due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days,⁷ and, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁸ On November 20, 2025, we extended the deadline by 25 days.⁹ On December 30, 2025 we extended the deadline by 28 days.¹⁰ Accordingly, the deadline for the preliminary results of this review is now February 5, 2026.

For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.¹¹ A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 83644 (October 17, 2024) (*Initiation Notice*).

⁴ *Id.*

⁵ See Memorandum, “Tolling of Deadlines for Antidumping Duty and Countervailing Duty Proceedings,” dated December 9, 2024.

⁶ See Memorandum, “Extension of Deadline for Preliminary Results of the 2023–2024 Antidumping Duty Administrative Review,” dated August 26, 2025.

⁷ See Memorandum, “Deadlines Affected by the Shutdown of the Federal Government,” dated November 14, 2025.

⁸ See Memorandum, “Tolling of all Case Deadlines,” dated November 24, 2025.

⁹ See Memorandum, “Extension of Deadline for Preliminary Results of the 2023–2024 Antidumping Duty Administrative Review,” dated November 20, 2025.

¹⁰ See Memorandum, “Extension of Deadline for Preliminary Results of the 2023–2024 Antidumping Duty Administrative Review,” dated December 30, 2025.

¹¹ See Memorandum, “Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Forged Steel Fittings from Taiwan; 2023–2024,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the scope of this *Order* are carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for Both-Well for the period September 1, 2023, through August 31, 2024:

Exporter or producer	Weighted-average dumping margin (percent)
Both-Well Steel Fittings Co., Ltd	3.03

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after 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.¹² Interested

¹² See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in*

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.¹³ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Oral presentations at the hearing will be limited to issues raised in the briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁶

Final Results of Review

Commerce intends to issue the final results of this administrative review,

including the results of its analysis of issues raised in any written briefs, no later than 120 days after the date of publication of this notice, unless this deadline is otherwise extended.¹⁷

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For an individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.*, 0.5 percent), upon completion of the final results, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales to a particular importer, we will calculate a per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales.¹⁸ Where either a respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.¹⁹

For entries of subject merchandise during the POR produced by an individually examined respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no

rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Both-Well will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is zero or *de minimis*, in which case no cash deposit will be required; (2) for an exporter not examined in this review but examined in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in a review or the less-than-fair-value (LTFV) investigation but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 116.17 percent, the all-others rate established in the LTFV investigation.²⁰

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results are being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

²⁰ See *Order*, 83 FR at 48280.

Antidumping and Countervailing Duty Proceedings, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See *APO and Service Final Rule*.

¹⁶ See 19 CFR 351.310(d).

¹⁷ See section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

¹⁸ See 19 CFR 351.212(b)(1).

¹⁹ See 19 CFR 352.106(c)(2); see also *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

Dated: February 4, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-469-818]

Ripe Olives From Spain: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers/exporters of ripe olives from Spain received countervailable subsidies during the period of review (POR) January 1, 2023, through December 31, 2023. In addition, Commerce is rescinding this review, in part, with respect to two companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Ted Pearson or Stefan Smith AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2631 or (202) 482-4342, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2018, Commerce published in the **Federal Register** the countervailing duty (CVD) order on ripe olives from Spain.¹ On September 20, 2024, Commerce published in the **Federal Register** the notice of initiation of an administrative review of the

Order.² On November 4, 2024, Commerce selected Agro Sevilla Aceitunas S.Coop And. (Agro Sevilla) and Angel Camacho Alimentación, S.L. (Camacho) for individual examination as the mandatory respondents in this administrative review.³

On December 9, 2024, Commerce tolled certain deadlines in this administrative proceeding by an additional 90 days.⁴ On July 1, 2025, Commerce extended the deadline for the preliminary results of this review until December 1, 2025.⁵ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.⁶ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Accordingly, the deadline for the preliminary results is now February 5, 2026.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁸ A list of topics included in the Preliminary Decision Memorandum is included in the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by the *Order* are ripe olives from Spain. For a

² *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (*Initiation Notice*).

³ *See* Memorandum, "Companies to be Reviewed," dated November 4, 2024.

⁴ *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁵ *See* Memorandum, "Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated July 1, 2025.

⁶ *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁷ *See* Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁸ *See* Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain; 2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

complete description of the scope of the *Order*, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their requests within 90 days of the date of publication of the notice of initiation. Commerce received a timely filed withdrawal of review for Aceitunas Guadalquivir, S.L. (Guadalquivir).⁹ Because the withdrawal request was timely filed, and no other parties requested a review of this company, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the *Order* with respect to Guadalquivir.

Additionally, Commerce's practice is to rescind an administrative review of the countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.¹⁰ Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.¹¹ Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the countervailing duty assessment rate for the review period.¹²

On March 18, 2025, we issued a memorandum notifying parties of our intent to rescind this administrative review with respect to Alimentary Group DCoop, S.Coop. And. (DCoop).¹³ We received no comments from interested parties regarding our intention to rescind the review with respect to DCoop. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are rescinding this administrative review with respect to

⁹ *See* Guadalquivir's Letter, "Withdrawal Request for Administrative Review Ripe Olives from Spain," dated October 1, 2024.

¹⁰ *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 14650 (April 11, 2019).

¹¹ *See* 19 CFR 351.212(b)(2).

¹² *See* 19 CFR 351.213(d)(3).

¹³ *See* Memorandum, "Intent to Rescind Review, in Part," dated March 18, 2025.

¹ *See Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 37469 (August 1, 2018) (*Order*).

DCoop, in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy program found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.¹⁴ For a full description of the methodology underlying our conclusions, including our reliance, in part, on facts otherwise available with adverse inferences pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following net countervailable subsidy rates exist for the POR, January 1, 2023, through December 31, 2023:

Company	Subsidy Rate (percent <i>ad valorem</i>)
Agro Sevilla Aceitunas S.Coop And.	5.00
Angel Camacho Alimentación, S.L. and its cross-owned affiliates ¹⁵	20.10

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon in making its final results.¹⁶

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than seven days

after the date of the last verification report issued in this administrative review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁷ 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.¹⁸ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁹ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²⁰

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.²¹

Assessment Rates

In accordance with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), we

preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For the companies listed above for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2023, through December 31, 2023, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the date of publication of this rescission in the **Federal Register**.

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated in the final results of this review for the respective companies listed above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. If the rate calculated in the final results is zero or *de minimis*, no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

¹⁴ 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.

¹⁵ As discussed in the Preliminary Decision Memorandum, Commerce found the following companies to be cross-owned with Angel Camacho Alimentación, S.L.: Grupo Angel Camacho, S.L., Cuarterola S.L., and Cucancho S.L.

¹⁶ See Musco Family Olive Company's Letter, "Request for Verification," dated December 9, 2024.

¹⁷ See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁸ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁹ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²⁰ See *APO and Service Procedures*.

²¹ See 19 CFR 351.310(d).

Final Results of Administrative Review

Unless extended, Commerce intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days after the date of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Notification to Interested Parties

The preliminary results and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistance Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Partial Rescission of Administrative Review
- V. Use of Facts Otherwise Available
- VI. Subsidies Valuation
- VII. Loan and Benchmark Interest Rates
- VIII. Analysis of Programs
- IX. Recommendation

[FR Doc. 2026-02639 Filed 2-9-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-193]

Erythritol From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of erythritol from the People's Republic of China (China). The period of investigation (POI) is January 1, 2023, through December 31, 2023.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Christopher Doyle, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2805.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2025, Commerce published the *Preliminary Determination* of this countervailing duty (CVD) investigation of erythritol from China, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(3), and aligned this CVD investigation with the final determination in the companion less-than-fair-value (LTFV) investigation.¹ On June 24, 2025, we issued a post-preliminary analysis memorandum regarding certain programs.²

Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days.³ Additionally, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁴ Accordingly, the deadline for this final determination is now February 4, 2026.

For a complete discussion of the events that followed the *Preliminary Determination*, see the Issues and Decision Memorandum.⁵ The Issues and Decision Memorandum is a public document and is made available to the public via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly

¹ See *Erythritol from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 90 FR 21000 (May 16, 2025) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, "Post-Preliminary Analysis Memorandum for the Countervailing Duty Investigation of Erythritol from the People's Republic of China," dated June 24, 2025 (Post-Preliminary Analysis).

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, "Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Erythritol from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Investigation

The merchandise covered by the scope of this investigation is Erythritol from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In the Preliminary Scope Memorandum, we set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope) in scope-specific case briefs or other written comments.⁶ We received comments from interested parties on the scope of the investigation as it appeared in the *Preliminary Determination*. For a summary of the product coverage comments submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, see the Final Scope Decision Memorandum.⁷ After analyzing these comments, we made one change to the scope of the investigation. Commerce is therefore modifying the scope language as it appeared in the *Initiation Notice* and *Preliminary Determination*. See the scope in Appendix I to this notice.

Verification

As provided in section 782(i) of the Act, Commerce conducted verification the information reported by Baolingbao Biology Co., Ltd. (Baolingbao Biology) and Shandong Sanyuan Biotechnology for use in the final determination. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided at verification.⁸

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are discussed in the Issues and Decision Memorandum. For a list of

⁶ See Memorandum, "Less-Than-Fair-Value and Countervailing Duty Investigations of Erythritol from the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 11, 2025 (Preliminary Scope Memorandum).

⁷ See Memorandum, "Final Scope Decision Memorandum," dated concurrently with this final determination (Final Scope Decision Memorandum).

⁸ See Memorandum, "Verification of the Questionnaire Responses of Shandong Sanyuan Biotechnology Co., Ltd.," dated July 16, 2025; see also Memorandum, "Verification of the Questionnaire Responses of Baolingbao Biology Company Limited in the Countervailing Duty Investigation of Erythritol from the People's Republic of China," dated July 18, 2025.

the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce 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.⁹ For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts otherwise available, including with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of adverse facts available (AFA), *see* the Issues and Decision Memorandum at the section entitled “Uses of Facts Available and Application of Adverse Inferences.”¹⁰

Changes Since the Preliminary Determination and Post-Preliminary Analysis

Based on our review and analysis of the information at verification and comments received from interested parties, we made changes to the subsidy rate calculations for Baolingbao Biology, Shandong Sanyuan, and all other producers/exporters, including the addition of subsidy programs included in the Post-Preliminary Analysis. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Section 705(c)(5)(A) of the Act provides that 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 subsidy rates for Baolingbao Biology and Shandong Sanyuan that are not zero, *de minimis*, or based entirely on the facts otherwise available. Consequently, 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 subject merchandise.¹¹

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist for the period January 1, 2023, through December 31, 2023:

Company	Subsidy rate (percent <i>ad valorem</i>)
Baolingbao Biology Co., Ltd.	4.54
Shandong Sanyuan Biotechnology Co., Ltd.	8.63
All Others	8.12

Disclosure

Commerce intends to disclose its calculations performed to interested parties in this final determination within five days of its public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination*, and pursuant to sections 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to collect cash deposits and suspend liquidation of entries of subject merchandise from China that were entered, or withdrawn from warehouse, for consumption, on or after May 16, 2025, the date of the publication of the *Preliminary*

¹¹ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company’s publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* Memorandum, “Calculation of the All-Others Rate for the Final Determination,” dated concurrently with this notice.

Determination in the **Federal Register**.¹² In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse, on or after September 13, 2025 but to continue the suspension of liquidation of all entries of subject merchandise on or before September 12, 2025.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. Pursuant to section 705(c)(2) of the Act, if the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its final affirmative determination that countervailable subsidies are being provided to producers and exporters of erythritol from China. As Commerce’s final determination is affirmative, in accordance with section 705(b) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of import of erythritol from China. In addition, we are making available to the ITC all non-privileged and non-proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a CVD order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the

⁹ *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; *see also* section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹⁰ *See also Preliminary Determination* PDM at 5–17.

¹² *See Preliminary Determination*, 90 FR at 21000.

“Continuation of Suspension of Liquidation” section.

Administrative Protective Order

This notice will serve as the final reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: February 4, 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 product within the scope of this investigation is erythritol, which is a sugar alcohol, commonly referred to as a polyol, typically produced by the fermentation of glucose using enzymes and yeast or yeast-like fungi (though the scope includes erythritol produced using any other feedstock or organism). Erythritol is an organic compound with the molecular formula C₄H₁₀O₄ and a Chemical Abstracts Service (CAS) registry number of 149–32–6. Other names for erythritol include meso-erythritol, (2R, 3S)-butan-1,2,3,4-tetrol, butane-1,2,3,4-tetrol, or meso-1,2,3,4-Tetrahydroxybutane.

Erythritol typically appears as a white crystalline, odorless product that rapidly dissolves in water. While erythritol is typically produced in the crystalline form or as a fine powder or in directly compressible form, the scope of this investigation covers all physical forms and grades of erythritol, including organic erythritol.

The merchandise covered by this investigation is classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2905.49.4000. Erythritol may also enter under HTSUS subheading 2106.90.9998. Although the HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise covered by this investigation is dispositive.

Specifically excluded from the scope are certain tabletop sugar substitute products that contain erythritol as an ingredient. Tabletop sugar substitute products include erythritol as an ingredient as well as a high intensity sweetener such as monk fruit, stevia, sucralose, aspartame, and saccharin. The

following tabletop sugar substitute products are excluded: finished goods packaged and labeled for retail sale or individual consumption.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Subsidies Valuation Information
- IV. Use of Facts Available and Adverse Inferences
- V. Analysis of Programs
- VI. Discussion of the Issues
 - Comment 1: Whether Commerce's Decision to Countervail the Provision of Electricity for LTAR Program Is Based on Substantial Evidence and Is in Accordance With Law
 - Comment 2: Whether Commerce's Decision To Countervail the Provision of Land-Use Rights for LTAR Is Based on Substantial Evidence and Is in Accordance With Law
 - Comment 3: Whether Commerce Erred in Its Calculation of the Benefit for the Provision of Land Use-Rights for LTAR Program
 - Comment 4: Other Subsidies
 - Comment 5: Whether To Modify the Benchmark Applied to Baolingbao Biology's "Flat" Electricity Purchases for the Provision of Electricity for LTAR Program
 - Comment 6: Whether Commerce Erred in Its Selection of Discount Rate To Allocate Baolingbao Biology's Benefits During the AUL Period
 - Comment 7: Whether To Modify the Benefit Calculation for Shandong Sanyuan for the Provision of Electricity for LTAR Program
 - Comment 8: Whether Commerce's Decision To Countervail the Provision of LNG for LTAR Program Is Based on Substantial Evidence and Is in Accordance With Law
 - Comment 9: Whether Commerce Erred in Its Benchmark Calculation for the Provision of LNG for LTAR Program
 - Comment 10: Whether Commerce Should Include Shandong Sanyuan's Benefit From the Income Tax Deduction For Research and Development Expenses Under the Enterprise Income Tax Law in the Final Determination
 - Comment 11: Whether Commerce's Decision To Countervail the Urban Land-Use Tax Reduction Program for High-Tech Enterprises Is Contrary to Law
- VII. Recommendation

[FR Doc. 2026–02563 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–818]

Mattresses From Malaysia: Initiation of Circumvention Inquiry on the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Brooklyn Bedding LLC, Carpenter Company, Future Foam, Inc., FXI, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, Serta Simmons Bedding, LLC, Tempur Sealy International, Inc., the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (collectively, the requesters), the U.S. Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether components of mattresses from Malaysia, which are assembled or completed in the United States into mattresses, are circumventing the antidumping duty (AD) order on mattresses from Malaysia.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office VIII Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2000.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2025, pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(h), the requesters filed a circumvention inquiry request alleging that mattresses completed in the United States using components manufactured in Malaysia are circumventing the *Order*¹ on mattresses from Malaysia and, accordingly, should be included within the scope of the *Order*.²

Due to a backlog of documents that were electronically filed via

¹ See *Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders and Amended Final Affirmative Antidumping Determination for Cambodia*, 86 FR 26460 (May 14, 2021) (*Order*).

² See Requesters' Letter, "Request to Initiate Anti-Circumvention Inquiry With Respect to Imports of Mattress Components from Malaysia Pursuant to Section 781(a) of the Act" dated November 18, 2025 (Circumvention Inquiry Request).

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 21 days.³

On December 15, 2025, we issued a supplemental questionnaire to the requesters.⁴ Subsequently, on December 22, 2025, the requesters filed their request for information.⁵ On January 15, 2026, Commerce extended the initiation deadline by an additional 15 days, in accordance with 19 CFR 351.226(d)(1).⁶ We issued a second supplemental questionnaire to the requesters on January 28, 2026.⁷ On January 30, 2026, the requesters filed their supplemental response to our second request for information.⁸

Scope of the Order

The merchandise covered by the scope of the *Order* are mattresses from Malaysia. For a complete description of the scope of the *Order*, see the Circumvention Initiation Checklist.⁹

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers mattress components exported from Malaysia and further processed and completed in the United States to produce mattresses.

Initiation of Circumvention Inquiry

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry."

Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each circumvention inquiry request allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party supporting these allegations." The requesters allege circumvention pursuant to section 781(a) of the Act (*i.e.*, merchandise completed or assembled in the United States).

Section 781(a)(1) of the Act provides that Commerce may find circumvention of an order when merchandise of the same class or kind subject to the order is completed or assembled in the United States. In conducting a circumvention inquiry, under section 781(a)(1) of the Act, Commerce relies on the following criteria: (A) merchandise sold in the United States is of the same class or kind as any merchandise that is the subject of an AD or countervailing (CVD) order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order or finding applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components referred to in subparagraph (B) is a significant portion of the total value of the merchandise.

In determining whether the process of assembly or completion in the United States is minor or insignificant under section 781(a)(1)(C) of the Act, section 781(a)(2) of the Act directs Commerce to consider: (A) the level of investment in the United States; (B) the level of research and development in the United States; (C) the nature of the production process in the United States; (D) the extent of production facilities in the United States; and (E) whether the value of the processing performed in the United States represents a small proportion of the value of the merchandise sold in the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in the United States is minor or insignificant.¹⁰ Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the United States, and to reach an affirmative or negative circumvention determination based on the totality of

the circumstances of the particular circumvention inquiry.¹¹

In addition, section 781(a)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in the United States within the scope of an AD or CVD order. Specifically, Commerce shall take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order applies; and (C) whether imports into the United States of the parts or components products in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order.

Analysis

Based on our analysis of requesters' circumvention inquiry request, Commerce determines that the requesters have satisfied the criteria under 19 CFR 351.226(c) to warrant the initiation of a country-wide circumvention inquiry of the *Order*. For a full discussion of the basis for our decision to initiate this circumvention inquiry, see the Circumvention Initiation Checklist.¹² As explained in the Circumvention Initiation Checklist, the information provided by the requesters warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, where the facts warranted initiation on a country-wide basis.¹³

Consistent with the approach in the prior circumvention inquiries that were

³ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁴ See Commerce's Letter, "Request for Anti-Circumvention Inquiry with Respect to Imports of Mattress Components from Malaysia: Supplemental Questionnaire," dated December 15, 2025 (Request for Information).

⁵ See Requesters' Letter, "Petitioners' Supplemental Questionnaire Response," dated December 22, 2025 (Supplemental Questionnaire Response).

⁶ See Memorandum, "Extension of Circumvention Inquiry Initiation Deadline," dated January 15, 2026.

⁷ See Commerce's Letter, "Request for Anti-Circumvention Inquiry with Respect to Imports of Mattress Components from Malaysia: Second Supplemental Questionnaire," dated January 28, 2026.

⁸ See Requesters' Letter, "Response to Second Anti-Circumvention Inquiry Supplemental Questionnaire," dated January 30, 2026 (Second Supplemental Response).

⁹ For a complete description of the scope of the *Order*, see Checklist, "Mattresses from Malaysia *Order*," dated concurrently with this notice (Circumvention Initiation Checklist).

¹⁰ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994) (SAA), at 893.

¹¹ See, e.g., *Hydrofluorocarbon Blends from the People's Republic of China: Final Affirmative Determination of Circumvention with Respect to R-410B, R-407G, and a Certain Custom Blend from the People's Republic of China*, 89 FR 56848 (July 11, 2024).

¹² See Circumvention Initiation Checklist.

¹³ See, e.g., *Certain Corrosion-Resistant Steel Products from the Republic of Korea and Taiwan: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 83 FR 37785 (August 2, 2018); *Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China: Initiation of Anti-Circumvention Inquiry on the Antidumping Duty Order*, 82 FR 40556, 40560 (August 25, 2017) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted); and *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 81 FR 79454, 79458 (November 14, 2016) (stating at initiation that Commerce would evaluate the extent to which a country-wide finding applicable to all exports might be warranted).

initiated on a country-wide basis, Commerce intends to issue a questionnaire to solicit information from producers and exporters in Malaysia concerning their shipments to the United States and the origin of any mattress components being further processed into merchandise subject to the *Order*.

Respondent Selection

Commerce intends to base respondent selection on quantity and value (Q&V) questionnaire responses that Commerce intends to issue to each potential respondent for which there is complete address information on the record. Additionally, Commerce intends to place the Q&V questionnaire on the record within five days of the publication of the initiation notice. Comments regarding the Q&V data and respondent selection should be submitted within seven days after placement of the Q&V data on the record of the inquiry. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

Commerce intends to establish a schedule for questionnaire responses after respondent selection. A company's failure to completely respond to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce will notify CBP of the initiation of this circumvention inquiry and direct CBP to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation under the *Order*, and to apply the cash deposit rate that would be applicable if the product was determined to be covered by the scope of the *Order*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)–(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and section 781(a) of the Act, Commerce determines that the requesters' request for this circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this

circumvention inquiry to determine whether certain imports of components of mattresses from Malaysia, and further processed and completed into mattresses in the United States, are circumventing the *Order*. In addition, we have included a description of the products that are the subject of this inquiry, and an explanation of the reasons for Commerce's decision to initiate this inquiry as provided above and in the accompanying Circumvention Initiation Checklist.¹⁴ In accordance with 19 CFR 351.226(e)(2), Commerce intends to issue its preliminary circumvention determination within 150 days from the date of publication of the notice of initiation of a circumvention inquiry in the **Federal Register**.

This notice is published in accordance with section 781(a) of the Act and 19 CFR 351.226(d)(1)(ii).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2026–02635 Filed 2–9–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–813]

Polyethylene Retail Carrier Bags From Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Euro SME Sdn Bhd/Euro Nature Green Sdn. Bhd. (collectively, Euro SME) did not make sales of polyethylene retail carrier bags (PRCBs) from Malaysia at less than normal value (NV) during the period of review (POR), August 1, 2023, through July 31, 2024. We invite interested parties to comment on these preliminary results.

DATES: Applicable February 10, 2026.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, 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) 482–5449.

¹⁴ See Circumvention Initiation Checklist.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, Commerce published in the **Federal Register** the antidumping duty (AD) order on polyethylene retail carrier bags from Malaysia.¹ On August 1, 2024, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On September 20, 2024, based on timely requests for review, Commerce initiated an administrative review covering Euro SME.³

On December 9, 2024, Commerce tolled the deadline to issue the preliminary results in this administrative review by 90 days.⁴ On July 3, 2025, Commerce extended the deadline for these preliminary results.⁵ Due to the lapse in appropriations and Federal Government shutdown, on November 14, 2025, Commerce tolled all deadlines in administrative proceedings by 47 days,⁶ and, due to a backlog of documents that were electronically filed via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) during the Federal Government shutdown, on November 24, 2025, Commerce tolled all deadlines in administrative proceedings by an additional 21 days.⁷ Finally, on December 22, 2025, Commerce fully extended the deadline for these preliminary results until February 5, 2026.⁸

¹ See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Malaysia*, 69 FR 48203 (August 9, 2004) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 89 FR 62714 (August 1, 2024).

³ See Petitioners' Letter, "Request for Administrative Review," dated August 30, 2024.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (*Initiation Notice*).

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁶ See Memorandum, "Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review," dated July 3, 2025.

⁷ See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated November 14, 2025.

⁸ See Memorandum, "Tolling of all Case Deadlines," dated November 24, 2025.

⁹ See Memorandum, "Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review," dated December 22, 2025.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁹ A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The merchandise covered by this Order is polyethylene retail carrier bags from Malaysia. For a full description of the scope of the Order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price were calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying these preliminary results, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

We preliminarily determine that the following estimated weighted-average dumping margin exists for the period August 1, 2023, through July 31, 2024:

Exporter/producer	Weighted-average dumping margin (percent)
Euro SME Sdn. Bhd.; and Euro Nature Green Sdn. Bhd. ¹⁰	0.00

Disclosure

Commerce intends to disclose its calculations and analysis performed to

interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance.¹¹ Pursuant to 19 CFR 351.309(c)(1)(ii), we have modified the deadline for interested parties to submit case briefs to Commerce to no later than 21 days after the publication of this notice.¹² Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹³ Interested parties who submit case or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; (2) a brief summary of the argument and, (3) a table of authorities.¹⁴ All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5:00 p.m. Eastern Time on the established deadline.

As provided under 19 CFR 351.309(c)(2)(iii) and (d)(2)(iii), we request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁵ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the

service of documents in 19 CFR 351.303(f).¹⁶

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a hearing request is made, Commerce will inform parties of the scheduled date for the hearing.¹⁷

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act, upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If a respondent's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).¹⁸ Where the respondent did not report entered value, we calculated a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also calculated an importer-specific *ad valorem* ratio based on estimated entered values. If a respondent's weighted-average dumping margin or an importer-specific assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping

⁹ See Memorandum, "Decision Memorandum for the Preliminary Results of the 2023–2024 Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Malaysia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

¹⁰ In the 2018–2019 review, Commerce treated Euro SME and Euro Nature Green Sdn. Bhd. (Nature Green) as a single entity. *See Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019*, 85 FR 83515 (December 22, 2020), and accompanying Preliminary Decision Memorandum at 3–5, unchanged in *Polyethylene Retail Carrier Bags from Malaysia: Preliminary Results of Antidumping Duty Administrative Review; 2018–*

2019, 86 FR 22019 (April 26, 2021). Our treatment of Euro SME and Nature Green remains unchanged in this review.

¹¹ See 19 CFR 351.309(b).

¹² Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs. *See* 19 CFR 351.309(c)(1)(ii).

¹³ See 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (APO and Service Procedures).

¹⁴ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁵ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁶ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

¹⁷ See 19 CFR 351.310(d).

¹⁸ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

duties in accordance with the *Final Modification for Reviews*.¹⁹

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Euro SME for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate in the original less-than-fair-value (LTFV) investigation (*i.e.*, 84.94 percent) if there is no rate for the intermediate company(ies) involved in the transaction.²⁰

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.²¹ We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies identified above in the "Final Results of Review" section will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this administrative review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or completed prior segment of this proceeding but the producer is, the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of the

subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 84.94 percent, the rate established in the investigation of this proceeding.²² These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.213(h)(2) and 351.221(b)(4).

Dated: February 5, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2026-02641 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF505]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory bodies will meet March 3–9, 2026 in Sacramento, California and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely.

DATES: The Pacific Council and its advisory bodies will meet March 3–9, 2026. The Pacific Council meeting will begin on Thursday, March 5, 2026, at 9 a.m. Pacific Time (PT), reconvening at 8 a.m. on Friday, March 6 through Monday, March 9, 2026. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Thursday, March 5, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the DoubleTree by Hilton Sacramento at 2001 Point West Way in Sacramento, California 95815 Telephone number 916–924–4900. Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Hayden York (hayden.york@pcouncil.org) or contact him at (503) 820–2424 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2280 or (866) 806–7204 toll-free, or access the Pacific Council website, www.pcouncil.org, for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The March 5–9, 2026 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially

¹⁹ See *Final Modification for Reviews*, 77 FR at 8103; see also 19 CFR 351.106(c)(2).

²⁰ See *Order*, 69 FR at 48204.

²¹ See section 751(a)(2)(C) of the Act.

²² See *Order*, 69 FR at 48204.

at 9 a.m. PT Thursday, March 5, 2026, and 8 a.m. PT Friday, March 6 through Monday, March 9, 2026. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see www.pcouncil.org).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as "Final" refer to actions the Council may take requiring the transmission of a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.3, Proposed Council Meeting Agenda, and will be in the advance March 2026 briefing materials and posted on the Pacific Council website at www.pcouncil.org no later than Friday, February 13, 2026.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Agenda
4. Executive Director's Report

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Salmon Management

1. National Marine Fisheries Service Report
2. Review of 2025 Fisheries and Summary of 2026 Stock Forecasts
3. Identify Management Objectives and Preliminary 2026 Management Alternatives
4. 2026 Management Alternative Analysis Recommendations
5. Further Direction for 2026 Management Alternatives
6. Adopt 2026 Management Alternatives for Public Review
7. Appoint Salmon Hearing Officers

D. Groundfish Management

1. National Marine Fisheries Service Report
2. Adopt Stock Assessments
3. Phase 2 Stock Definitions: Remaining Nearshore Species—Final Action

4. Widow Rockfish Alternative Harvest Control Rule: Problem Statement, Range of Alternatives
5. Inseason Adjustments—Final Action
6. Initial Harvest Specifications for 2027–28
7. Implementation of the 2026 Pacific Whiting Fishery under the U.S./Canada Agreement
8. Initial Stock Assessment Plan for 2027 and 2029
9. 2027–28 Stock Assessment Terms of Reference—Scoping
10. 2027–28 Fisheries—Analytical Update and Limited Actions

E. Ecosystem Management

1. California Current Ecosystem Annual Status Report and 2026 Science Review Topics
2. Special Project 3: Workshop to Develop New Fishing Systems

F. Habitat Issues

1. Current Habitat Issues

G. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. International Management Activities
3. Exempted Fishing Permits—Preliminary or Final
4. Highly Migratory Species Roadmap: Exempted Fishing Permit Metrics and Benchmarks—Final

H. Pacific Halibut Management

1. Incidental Limits: Salmon Troll Options and Fixed Gear Sablefish Final Action

I. Administrative Matters

1. Approve Meeting Record
2. Membership Appointments and Council Operating Procedures
3. Future Council Meeting Agenda and Workload Planning

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, www.pcouncil.org, no later than Friday, February 13, 2026 by the end of the business day.

Schedule of Ancillary Meetings

Day 1—Tuesday, March 3, 2026

Scientific and Statistical Committee 8 a.m.

Day 2—Wednesday, March 4, 2026

Groundfish Advisory Subpanel 8 a.m.

Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Enforcement Consultants 2 p.m.

Day 3—Thursday, March 5, 2026

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Ecosystem Advisory Subpanel 8 a.m.
Ecosystem Workgroup 8 a.m.
Enforcement Consultants As Necessary

Day 4—Friday, March 6, 2026

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Enforcement Consultants As Necessary

Day 5—Saturday, March 7, 2026

Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Highly Migratory Species Advisory Subpanel 8 a.m.
Highly Migratory Species Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary, Online

Day 6—Sunday, March 8, 2026

Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary, Online

Day 7—Monday, March 9, 2026

Salmon Technical Team 8 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids

should be directed to Mr. Hayden York (hayden.york@pcouncil.org; (503) 820-2424) at least 10 business days prior to the meeting date.

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

Dated: February 5, 2026.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2026-02573 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF419]

Marine Mammals; File No. 29471

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Fort Wayne Zoo, 3411 Sherman Blvd., Fort Wayne, IN 46808 (Responsible Party: Rick Schuiteman), has applied in due form for a permit to import one California sea lion (*Zalophus californianus*) from the West Edmonton Mall, Edmonton, Alberta, Canada, to the Fort Wayne Zoo for public display.

DATES: Written comments must be received on or before March 12, 2026.

ADDRESSES: The application documents are available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 29471 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Courtney Smith, Ph.D., or Jennifer Skidmore (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant is proposing to import one adult female California sea lion

from the West Edmonton Mall to the Fort Wayne Zoo for public display purposes. The subject sea lion (Local ID 10214/"Quinty," aged 18 years), was captive-born in Amsterdam, Netherlands, and has resided at the West Edmonton Mall since 2008. This acquisition is a recommendation from the Association of Zoos and Aquariums and will enhance the social grouping needs at Fort Wayne Zoo. The applicant has requested that any issued permit be valid through May 31, 2027.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 5, 2026.

Shannon Bettridge,

Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026-02595 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF498]

Marine Mammals; File No. 29044

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Amanda Bishop, Ph.D., University of Alaska Anchorage, Department of Biological Sciences, 3101 Science Circle, Anchorage, AK 99501, has applied in due form for a permit to receive, import, and export pinniped parts for scientific research.

DATES: Written comments must be received on or before March 12, 2026.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species home page, <https://apps.nmfs.noaa.gov>, and then selecting

File No. 29044 from the list of available applications. These documents are also available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 29044 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT:

Jennifer Skidmore or Shasta McClenahan, Ph.D., at (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export pinniped parts to study toxicology, ecology, and physiology. An unlimited number of parts from up to 500 individual pinnipeds of each species, excluding walrus, may be received, imported, and exported worldwide on an annual basis. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 5, 2026.

Shannon Bettridge,

Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026-02593 Filed 2-9-26; 8:45 am]

BILLING CODE 3510-22-P

COMMISSION OF FINE ARTS**Notice of Meeting**

Per 45 CFR Chapter XXI § 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for February 19, 2026 at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: www.cfa.gov. Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing cfastaff@cfa.gov; or by calling 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated February 5, 2026 in Washington, DC.

Zakiya N. Walters,

Administrative Officer.

[FR Doc. 2026-02600 Filed 2-9-26; 8:45 am]

BILLING CODE 6330-01-P

DEPARTMENT OF DEFENSE**Department of the Air Force****Notice of Intent To Grant a Partially Exclusive Patent License**

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive, the field to include foreign object debris detection on paved surfaces, patent license to Airtrek Robotics, Inc. having a place of business at 2900 Reading Road, Cincinnati, OH 45206.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this notice.

ADDRESSES: Submit objections to Ryan Toner, AFRL/RI, 525 Brooks Road, Rome, New York 13441; Email: afrl.ri.techtransfer@us.af.mil. Include Docket No. 25-RI-L-02 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Ryan Toner, AFRL/RI, 525 Brooks Road, Rome, New York 13441; Email: afrl.ri.techtransfer@us.af.mil.

SUPPLEMENTARY INFORMATION:

Abstract of patent application(s): A framework for estimating image interpretability degradation associated with image compression is provided. An image compression broker system can determine an image compression setting to achieve an interpretability task in accordance with available communication bandwidth or transmission time objectives. Estimating image interpretability degradation includes detecting edge points of an uncompressed image and determining gradients corresponding to the detected edge points; compressing in accordance with a compression parameter setting the uncompressed image to generate a compressed image and determining gradients corresponding to the edge points in the compressed image; determining from the gradients associated with the edge points gradient ratios; and estimating from the gradient ratios an image interpretability loss of the compressed image.

Intellectual property: U.S. Patent No. 10,827,190, issued on 03 November 2020, and entitled “Image Compression Selection Based On Interpretability Loss Estimation.”

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

(Authority: 35 U.S.C. 209; 37 CFR part 404.)

Crystle C. Poge,

Air Force Federal Register Liaison Officer.

[FR Doc. 2026-02596 Filed 2-9-26; 8:45 am]

BILLING CODE 3911-44-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[NJ26-5-000]

City of Pasadena, California; Notice of Filing

Take notice that on December 29, 2025, City of Pasadena, California submits tariff filing: City of Pasadena 2025 TRBAA Update to be effective January 1, 2026.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on February 11, 2026.

Dated: February 4, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02549 Filed 2-9-26; 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 corporate filings:

Docket Numbers: EC26-56-000.

Applicants: Atlas Solar V, LLC, Atlas Solar VI, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Atlas Solar V, LLC et al.

Filed Date: 1/30/26.

Accession Number: 20260130-5555.

Comment Date: 5 p.m. ET 2/20/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12-895-038.

Applicants: Minco Wind Interconnection Services, LLC.

Description: Notice of Change in Status of Minco Wind Interconnection Services, LLC.

Filed Date: 1/29/26.

Accession Number: 20260129-5563.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER22-167-001.

Applicants: Ontario Power Generation Energy Trading, Inc.

Description: Compliance filing: Notice of Change in Status to be effective 2/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5092.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER25-3331-002.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing—Clarify Inappropriate Bidding Strategies Regarding EESLs to be effective 8/31/2025.

Filed Date: 2/4/26.

Accession Number: 20260204-5026.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-160-000.

Applicants: Southwest Power Pool, Inc.

Description: Refund Report: 1628R30 Western Farmers Electric Coop. Refund Report to be effective N/A.

Filed Date: 2/4/26.

Accession Number: 20260204-5035.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-629-000.

Applicants: Cartwright Solar II LLC.

Description: Supplement to 12/01/2025, Cartwright Solar II LLC tariff filing.

Filed Date: 1/30/26.

Accession Number: 20260130-5554.

Comment Date: 5 p.m. ET 2/9/26.

Docket Numbers: ER26-653-001.

Applicants: Avista Corporation.

Description: Compliance filing: Avista Corp Amended Order 904 Compliance Filing to be effective 3/20/2025.

Filed Date: 2/4/26.

Accession Number: 20260204-5104.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1255-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, Service Agreement No. 7810; AE2-185/AF2-404 to be effective 1/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5024.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1256-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA, Service Agreement No. 7809; AE2-283 to be effective 1/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5025.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1257-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Attachment AE Revisions to Update Congestion Management Process to be effective 4/6/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5033.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1258-000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator Inc. submits temporary limited prospective waiver of Section 26.4.2.2.1 and its Market Admin and Control Area Services Tariff to address Import Credit Requirement calculations for Day-Ahead Bids.

Filed Date: 1/30/26.

Accession Number: 20260130-5550.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-1259-000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 325—Joint Participation Agreement to be effective 4/6/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5057.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1260-000.

Applicants: Selkirk Cogen Partners LLC.

Description: § 205(d) Rate Filing: NOS for Name Change to be effective 4/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5067.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1261-000.

Applicants: Prairie Wind Transmission LLC, Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Prairie Wind Transmission LLC submits tariff filing per 35.13(a)(2)(iii): Prairie Wind Transmission, LLC Formula Rate Revisions to Comply with Order 898 to be effective 4/6/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5080.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1262-000.

Applicants: Evergy Kansas Central, Inc.

Description: § 205(d) Rate Filing: EKC FERC Order 898 Filing to be effective 4/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5084.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1263-000.

Applicants: Evergy Kansas Central, Inc. Evergy Metro, Inc. Evergy Missouri West, Inc. Evergy Kansas South, Inc., Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Evergy Companies Formula Rates Revisions to Comply with Order 898 to be effective 4/6/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5095.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1264-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2026-02-04 Module E-1 Revisions on HUC and FRT to be effective 4/6/2026.

Filed Date: 2/4/26.

Accession Number: 20260204-5111.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1265-000.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NYISO Compliance: Conform FERC eTariff Records re: DADRP-DSASP Sunset to be effective 4/16/2024.

Filed Date: 2/4/26.

Accession Number: 20260204-5113.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26-1266-000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2026–02–04 Revision to PLGIA to be effective 4/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204–5136.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER26–1267–000.

Applicants: Montana-Dakota Utilities Co.

Description: § 205(d) Rate Filing: Certificate of Concurrence—Badger Wind, LLC to be effective 1/16/2026.

Filed Date: 2/4/26.

Accession Number: 20260204–5142.

Comment Date: 5 p.m. ET 2/25/26.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES26–29–000.

Applicants: Upper Peninsula Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Upper Peninsula Power Company.

Filed Date: 1/30/26.

Accession Number: 20260130–5557.

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, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: February 4, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02552 Filed 2–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ26–1–000]

City of Banning, California; Notice of Filing

Take notice that on December 11, 2025, City of Banning, California submits tariff filing per 35.28(e): City of Banning 2026 Transmission Revenue Balancing Account Adjustment and Existing Transmission Contracts Update to be effective January 1, 2026.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy

Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on February 12, 2026.

Dated: February 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02608 Filed 2–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2237–036]

Georgia Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed Georgia Power Company's application for non-project use of project lands and waters to establish a commercial dredging operation at the Morgan Falls Hydroelectric Project No. 2237 and have prepared an Environmental Assessment (EA) for the project.¹ The licensee proposes to allow River Sand Incorporated to use and occupy project lands and waters in order to establish a commercial dredging operation inside the project boundary at the previous location of Ace Sand. The Morgan Falls project is located on the Chattahoochee River and partially occupies federal lands managed by the National Park Service.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed commercial dredging operation, alternatives to the proposed action, and concludes that the proposed commercial dredging operation, with appropriate environmental protective measures, would not constitute a major federal

¹ The unique identification number for documents relating to this environmental review is EAXX–019–20–000–1762342110.

action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number (P-2237) in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by March 9, 2026 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2237-036.

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 Meghan Walker at 202-502-6168 or meghan.walker@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: February 5, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-02611 Filed 2-9-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[NJ26-4-000]

City of Anaheim, California; Notice of Filing

Take notice that on December 23, 2025, City of Anaheim, California submits tariff filing: City of Anaheim 2026 Transmission Revenue Balancing Account Adjustment and Gross Load Update to be effective January 1, 2026.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street

NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on February 11, 2026.

Dated: February 4, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-02555 Filed 2-9-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26-25-000]

Columbia Gulf Transmission, LLC; Notice of Virtual Scoping Session for the Proposed Maysville Project

On January 7, 2026, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Maysville Project, and Notice of Public Scoping Sessions*. The notice described the project facilities (including a facilities map) and announced the ongoing scoping period that ends on February 6, 2026. However, on January 23, 2026, the Commission cancelled the public scoping sessions due to a winter storm and stated a separate notice would be issued to indicate the dates and times for any rescheduled scoping session.

In an effort to gather public comments that would have been received at the recently cancelled scoping sessions, this notice invites you to attend a virtual public scoping session Commission staff will conduct by telephone for the proposed Maysville Project (Project). With this notice the Commission is also extending the scoping period for the project, which will now close on February 23, 2026. This virtual scoping session will be held as follows:

Maysville Project

Public Scoping Session

Date, Time, and Call-In Information

Thursday, February 19, 2026

6:00 p.m. (EST)

Call in number: 1-866-652-5200

Ask to be joined into the Federal Energy Regulatory Commission (FERC) call

Note that the scoping meeting will start at 6:00 p.m. (EST) and will terminate once all participants wishing to comment have had the opportunity to do so, or at 8:00 p.m. (EST), whichever comes first. The primary goal of this scoping session is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken one at a time with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted.

There will not be a formal presentation by Commission staff when the session opens. You may call at any time after the session begins, at which time you will be placed on hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of 5 minutes may be implemented for each commentor. Please note that your hold times may vary based on the number of callers at any given time.

Your oral comments will be recorded by the court reporter and become part of the public record for this proceeding. Transcripts of all comments received during the scoping session will be publicly available on FERC's eLibrary system. 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 virtual scoping session.

As a reminder, the Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676, TTY (202) 502-8659, 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, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using *eComment* is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (www.ferc.gov) under the link to FERC Online. With *eFiling*, you can provide comments in a

variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on "*eRegister*." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26-25-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

This notice is being sent to the Commission's current environmental mailing list for the Project. Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: February 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02607 Filed 2-9-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[NJ26-3-000]

City of Riverside, California; Notice of Filing

Take notice that on December 18, 2025, City of Riverside, California

submits tariff filing: City of Riverside 2026 Transmission Revenue Balancing Account Adjustment and Existing Transmission Contracts Update to be effective January 1, 2026.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to

contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Comment Date: 5:00 p.m. Eastern Time on February 11, 2026.

Dated: February 4, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02554 Filed 2-9-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
SR Georgetown, LLC	EG26-42-000
Armadillo Solar Center, LLC	EG26-43-000
South River Phase II, LLC	EG26-44-000
Niyol Energy Storage, LLC	EG26-45-000
Cartwright Solar I LLC	EG26-46-000
San Jacinto Cogeneration LLC	EG26-47-000
Atlas VI, LLC	EG26-48-000
Atlas V, LLC	EG26-49-000
Cradle Solar, LLC	EG26-50-000
Goat Rock Solar, LLC	EG26-51-000
Hester Hill Solar, LLC	EG26-52-000
Pinewood Solar, LLC	EG26-53-000
Southwest Atlanta Energy Storage, LLC	EG26-54-000
Enbridge Solar (Sequoia II), LLC ..	EG26-55-000
Palo Duro Energy Storage, LLC	EG26-56-000
Panhandle Energy Storage, LLC	EG26-57-000
Roswell Energy Storage, LLC	EG26-58-000
Webb Road Energy Storage, LLC	EG26-59-000
Gaskell West Storage I LLC	EG26-60-000
Chaves Energy Storage, LLC	EG26-61-000
Big Cypress Energy Storage, LLC	EG26-62-000
Butler Ridge Wind, LLC	EG26-63-000
Delta Bobcat Energy Storage, LLC	EG26-64-000
Flat Fork Energy Storage, LLC	EG26-65-000
Greer Energy Storage, LLC	EG26-66-000
Heartland Divide Wind Energy, LLC	EG26-67-000
Pheasant Run Wind Energy, LLC ..	EG26-68-000
Tuscola Wind Energy II, LLC	EG26-69-000
Wildwood Energy Storage, LLC	EG26-70-000
Cartwright Solar II LLC	EG26-71-000
Westlands Grape, LLC	EG26-72-000
Westlands VI Project, LLC	EG26-73-000
Bob Creek Wind, LLC	EG26-74-000
Selenite Springs Solar, LLC	EG26-75-000
Cattle Drive Solar, LLC	EG26-76-000
King Mountain Energy Storage, LLC	EG26-77-000
Erath County Solar, LLC	EG26-78-000
Hackberry Creek Solar, LLC	EG26-79-000
ZSS Power, LLC	EG26-80-000
Flatland Solar Energy, LLC	EG26-81-000
North Johnson Energy Center, LLC	EG26-82-000
Zeta Solar, LLC	EG26-83-000
Alle-Catt Wind Energy LLC	EG26-84-000
Waco Solar II, LLC	EG26-85-000
Inertia Solar Project, LLC	EG26-86-000

Take notice that during the month of January 2026, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2025).

Dated: February 4, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02553 Filed 2-9-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2280-018]

Seneca Generation, LLC; Notice of Effectiveness of Withdrawal of Operating Plan and Operation Compliance and Monitoring Plan

On November 13, 2025, Seneca Generation, LLC (licensee) filed an Operating Plan and Operation Compliance and Monitoring Plan pursuant to Articles 303 and 403, respectively, of the license for the Kinzua Pumped Storage Project No. 2280.¹ On January 9, 2026, the licensee filed a notice of withdrawal of the request. The project is located on the Allegheny River in Warren County, Pennsylvania at the U.S. Army Corps of Engineers (Corps) Kinzua Dam, and occupies federal land administered by the Corps, and the U.S. Forest Service (Forest Service).

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,² the withdrawal of the application became effective on January 26, 2026, and this proceeding is hereby terminated.

(Authority: 18 CFR 2.1.)

Dated: February 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02612 Filed 2-9-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[NJ26-6-000]

City of Colton, California; Notice of Filing

Take notice that on January 8, 2026, City of Colton, California submits tariff filing; City of Colton 2026 Transmission Revenue Balancing Account Adjustment

¹ *Seneca Generation, LLC*, 152 FERC ¶ 62,045 (2015).

² 18 CFR 385.216(b) (2025).

and Existing Transmission Contracts Update to be effective January 1, 2026.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or *OPP@ferc.gov*.

Comment Date: 5:00 p.m. Eastern Time on February 11, 2026

Dated: February 4, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02550 Filed 2-9-26; 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: ER20-2740-000.

Applicants: Hickory Run Energy, LLC.

Description: Refund Report: Hickory Run Refund Report Re ER20-2740 to be effective N/A.

Filed Date: 2/4/26.

Accession Number: 20260204-5152.

Comment Date: 5 p.m. ET 2/25/26.

Docket Numbers: ER22-2305-002.

Applicants: Louisville Gas and Electric Company.

Description: Compliance filing: Order No. 881 Compliance Filing Establish Actual Effective Date to be effective 12/12/2025.

Filed Date: 2/5/26.

Accession Number: 20260205-5113.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER23-2964-001.

Applicants: East Kentucky Power Cooperative, Inc., PJM Interconnection, L.L.C.

Description: Compliance filing: East Kentucky Power Cooperative, Inc. submits tariff filing per 35: PJM TOs Ministerial Clean-Up to CTOA Amendments re Order 881 Line Ratings to be effective 3/4/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5046.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER25-3475-004;

ER10-1292-018; ER10-1319-020;

ER10-1276-020; ER10-1353-020;

ER18-1183-013; ER18-1184-013;

ER10-1303-018; ER25-3172-002;

ER10-1287-019; ER24-3028-002;

ER24-3029-002; ER23-1411-005.

Applicants: Newport Solar LLC, Livingston Generating Station, LLC, Kalamazoo Generating Station, LLC, Grayling Generation Station Limited Partnership, Genesee Solar Energy, LLC, Genesee Power Station Limited Partnership, Delta Solar Power II, LLC, Delta Solar Power I, LLC, Dearborn Industrial Generation, L.L.C., Consumers Energy Company, CMS Generation Michigan Power, LLC, CMS

Energy Resource Management Company, Branch Solar, LLC.

Description: Notice of Non-Material Change in Status of Branch Solar, LLC, et al.

Filed Date: 1/30/26.

Accession Number: 20260130-5558.

Comment Date: 5 p.m. ET 2/20/26.

Docket Numbers: ER26-700-001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2026-02-05 SA 4608 Entergy Mississippi-Entergy Mississippi Sub Orig GIA (4146) to be effective 12/1/2025.

Filed Date: 2/5/26.

Accession Number: 20260205-5057.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1268-000.

Applicants: Alabama Power Company.

Description: Compliance filing: SEEM Agreement Compliance Filing to Implement Settlement Agt in Docket ER26-445 to be effective 4/7/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5020.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1269-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 4490R1 Western Farmers Energy Services Meter Agent Agreement to be effective 2/1/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5021.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1270-000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: Modifications to Attachment C, Figure 1 and Section 4 to be effective 4/13/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5056.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1271-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Notice of Cancellation of NSA, SA No. 7131; Queue No. W1-108 to be effective 2/4/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5065.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1272-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original GIA No. 7821; AF1-064/AF2-126; & Notice of Cancellation of ISA No. 7069 to be effective 1/7/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5069.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1273-000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2026-02-05 SA 4672 METC-Mustang Mile Solar GIA (S1066) to be effective 2/2/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5075.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1274-000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO-NYSEG Joint 205: Standard IA Yellow Barn Solar SA2945 (CEII) to be effective 1/23/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5077.

Comment Date: 5 p.m. ET 2/26/26.

Docket Numbers: ER26-1276-000.

Applicants: Public Service Company of Colorado.

Description: Tariff Amendment: 2026-02-05 PSCo Study Cancellations to be effective 2/6/2026.

Filed Date: 2/5/26.

Accession Number: 20260205-5112.

Comment Date: 5 p.m. ET 2/26/26.

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 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-02605 Filed 2-9-26; 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: ER10–2475–040; ER10–2474–039; E ER10–3246–033; ER11–4666–014; ER11–4667–014; ER12–295–013; ER24–1587–009; ER22–1385–020; ER23–674–016; ER23–676–017; ER13–1266–060; ER15–2211–057; ER10–1520–026; ER10–1521–026.

Applicants: Occidental Power Marketing, L.P., Occidental Power Services, Inc., MidAmerican Energy Services, LLC, CalEnergy, LLC, BHE Power Watch, LLC, BHE Wind Watch, LLC, BHER Market Operations, LLC., AlbertaEx, L.P., BHE Rim Rock Wind, LLC, BHE Glacier Wind 2, LLC, BHE Glacier Wind 1, LLC, PacifiCorp, Sierra Pacific Power Company, Nevada Power Company.

Description: Notice of Non-Material Change in Status of Nevada Power Company, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5574.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER11–2029–012; ER10–2595–007; ER12–1400–010; ER10–2468–007; ER10–2596–019; ER10–2597–009; ER10–1821–025; ER12–2200–014; ER10–2598–003; ER14–1219–019; ER21–44–010; ER16–1732–019; ER17–993–018; ER20–660–015; ER18–95–015; ER24–2139–004; ER24–1687–004; ER17–989–018; ER25–1233–004; ER24–2920–003; ER10–1892–028; ER10–1854–025; ER22–425–008; ER17–990–018; ER17–2084–010; ER11–4694–016; ER17–1946–018; ER25–25–004; ER24–438–004; ER25–2508–002; ER10–2739–041; ER11–3320–025; ER12–1680–017; ER22–937–007; ER22–938–007; ER22–1241–007; ER10–2744–026; ER16–2405–019; ER16–2406–020; ER11–113–020; ER23–618–006; ER13–2316–023; ER23–1829–005; ER17–992–018; ER10–2678–025; ER10–1631–025; ER14–19–024; ER20–1440–011; ER20–967–008.

Applicants: Great Bay Solar II, LLC, Yards Creek Energy, LLC, West Deptford Energy, LLC, University Park Energy, LLC, Troy Energy, LLC, Springdale Energy, LLC, Shady Oaks Wind 2, LLC, Seneca Generation, LLC, Sandy Ridge Wind 2, LLC, Sandy Ridge Wind, LLC, Rockford Power, LLC, Rockford Power II, LLC, Riverside Generating Company, L.L.C., REV Energy Marketing, LLC New Market Solar ProjectCo 2, LLC, New Market Solar ProjectCo 1, LLC, Minonk

Wind, LLC, LSP University Park, LLC, LS Power Marketing, LLC, LPH Marketing, LLC, Jade Meadow LLC, Hunterstown Generation, LLC, Helix Ironwood, LLC, GSG 6, LLC, Great Bay Solar 1, LLC, Gans Energy, LLC, Enerwise Global Technologies, LLC, Doswell Limited Partnership, Columbia Energy LLC, Clearview Solar I, LLC, Clearlight Energy Services LLC, Chambersburg Energy, LLC, Carvers Creek LLC, Capon Bridge Solar, LLC, Buchanan Energy Services Company, LLC, Bolt Energy Marketing, LLC, Bath County Energy, LLC, Aurora Generation, LLC, Altavista Solar, LLC, Armstrong Power, LLC, Rolling Thunder I Power Partners, LLC, Mehoopany Wind Energy LLC, Goshen Phase II LLC, Fowler Ridge III Wind Farm LLC, Fowler Ridge II Wind Farm LLC, Fowler Ridge Wind Farm LLC, Flat Ridge 2 Wind Energy LLC, Flat Ridge Wind Energy, LLC, Cedar Creek II, LLC.

Description: Notice of Change in Status of Cedar Creek II, LLC, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5567.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER11–4666–013; ER11–4667–013; ER12–295–012; ER23–676–016.

Applicants: BHE Power Watch, LLC, BHE Rim Rock Wind, LLC, BHE Glacier Wind 2, LLC, LLC, BHE Glacier Wind 1, LLC.

Description: Notice of Non-Material Change in Status of BHE Glacier Wind 1, LLC, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5573.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER12–1933–019; ER12–1934–017; ER10–1882–019.

Applicants: Wisconsin River Power Company, Wisconsin Power and Light Company, Interstate Power and Light Company.

Description: Notice of Change in Status of Interstate Power and Light Company, et al. under ER12–1933, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5571.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER15–793–006.

Applicants: Southern Indiana Gas and Electric Company, Inc.

Description: Notice of Change in Status of Southern Indiana Gas and Electric Company, Inc.

Filed Date: 1/29/26.

Accession Number: 20260129–5572.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER18–1978–019; ER10–1852–123; ER19–1392–017; ER11–4462–118; ER18–772–018; ER16–1509–008; ER17–838–092; ER10–1951–095; ER11–2192–028; ER25–1410–003;

ER22–96–011; ER25–1409–003; ER24–61–008; ER25–2688–002; ER25–3256–002.

Applicants: Windy Lane Energy Center, LLC, Star Light Energy Center, LLC, Sky Ranch Solar, LLC, Sky Ranch Energy Storage II, LLC, Route 66 Solar Energy Center, LLC, Route 66 Energy Storage, LLC, Red Mesa Wind, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Marketing, LLC, New Wave Energy LLC, New Mexico Wind, LLC, NEPM II, LLC, High Lonesome Mesa Wind, LLC, Florida Power & Light Company, Casa Mesa Wind, LLC.

Description: Notice of Non-Material Change in Status of Casa Mesa Wind, LLC, et al.

Filed Date: 1/29/26.

Accession Number: 20260129–5568.

Comment Date: 5 p.m. ET 2/19/26.

Docket Numbers: ER19–192–003.

Applicants: Great Plains Windpark Legacy, LLC.

Description: Notice of Non-Material Change in Status of Great Plains Windpark Legacy, LLC.

Filed Date: 1/29/26.

Accession Number: 20260129–5569.

Comment Date: 5 p.m. ET 2/19/26.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH26–9–000.

Applicants: Lotus Infrastructure, LLC.

Description: Lotus Infrastructure, LLC submits FERC 65–B Notice of Change in Fact to Waiver Notification.

Filed Date: 1/29/26.

Accession Number: 20260129–5570.

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 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02604 Filed 2–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 487–144]

BIF III Holtwood LLC; Notice of Application for Non-Project Use of Project Land and Waters Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 487–144.

c. *Date Filed:* October 17, 2025.

d. *Applicant:* BIF III Holtwood LLC.

e. *Name of Project:* Wallenpaupack Hydroelectric Project.

f. *Location:* The Wallenpaupack Hydroelectric Project is located in Pike and Wayne counties, Pennsylvania; the proposed docks would be located in Pike County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Katie Lester, Brookfield Renewable, (570) 226–1371, *kathleen.lester@brookfieldrenewable.com*.

i. *FERC Contact:* Shawn Halerz, (202) 502–6360, *Shawn.Halerz@ferc.gov*.

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* March 9, 2026, 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–487–144. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The licensee requests Commission authorization to permit Big Woods I POA to modify three existing community docks to accommodate an additional seven watercraft, for a total watercraft capacity of 31. The proposed changes would conform to the project's approved Shoreline Management Plan and the Public Lake Use and Shoreline Use Permitting Policy for Lake Wallenpaupack.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. 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*.

(Authority: 18 CFR 2.1)

Dated: February 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02610 Filed 2–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Project No. 5274–001]

New Hampshire Department of Environmental Services; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed New Hampshire Department of Environmental Services' application for surrender of the exemption for the Squam Lake Dam Hydroelectric Project No. 5274 and have prepared an Environmental Assessment (EA) for the project.¹ The exemptee proposes to surrender its exemption and decommission the project. The project is located on the Squam River, in Grafton County, New Hampshire. The project does not occupy any federal lands.

The EA contains Commission staff's analysis of the potential environmental effects of the proposed surrender, alternatives to the proposed action, and concludes that the proposed surrender would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number (P–5274) in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by March 9, 2026, by 5:00 p.m. Eastern Time.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/>

[ecomment.asp](http://www.ferc.gov/docs-filing/ecomment.asp). For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–5274–001.

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 Kelly Fitzpatrick at 202–502–8435 or kelly.fitzpatrick@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: February 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02613 Filed 2–9–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. NJ26–2–000]

City of Azusa, California; Notice of Filing

Take notice that on December 11, 2025, City of Azusa, California submits tariff filing: City of Azusa 2025 Transmission Revenue Balancing Account Adjustment and Existing Transmission Contract Update to be effective January 1, 2026.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on February 12, 2026.

Dated: February 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02609 Filed 2–9–26; 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:

¹ The unique identification number for documents relating to this environmental review is EAXX–019–20–000–1755615924.

Filings Instituting Proceedings

Docket Numbers: RP26–463–000.

Applicants: Gillis Hub Pipeline, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement 2.3.2026 to be effective 2/5/2026.

Filed Date: 2/3/26.

Accession Number: 20260203–5092.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–464–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 2.4.26 Negotiated Rates—Macquarie Energy LLC H-4090–89 to be effective 2/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204–5027.

Comment Date: 5 p.m. ET 2/17/26.

Docket Numbers: RP26–465–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Shell Feb 2026) to be effective 2/5/2026.

Filed Date: 2/4/26.

Accession Number: 20260204–5143.

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 5, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02606 Filed 2–9–26; 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 Industry Webinar

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following webinar:

North American Electric Reliability Corporation: Industry Webinar: Project 2025–04 Order No. 901 Planning Studies, WebEx, February 9, 2026 | 1:00 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/02-09-26-industry-webinar-project-2025-04-order-no.-901-planning-studies>.

The discussion at the webinar, which is 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 4, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–02551 Filed 2–9–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2025–0030; FRL–12881–02–OCSPP]

Product Cancellation Order for Certain Pesticide Registrations (From July 31, 2025, Notice)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily

requested by the registrants and accepted by the Agency, of the products listed in Table 1 & Table 1A of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a July 31, 2025, **Federal Register** Notice of Receipt of Requests from the registrant listed in Table 2 of Unit II, to voluntarily cancel these product registrations. In the July 31, 2025, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrant withdrew their requests. The registrant of 70060–12, 70060–13 & 70060–32 withdrew their requests; therefore, they have been removed from this notice. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective February 10, 2026.

FOR FURTHER INFORMATION CONTACT:

Christopher Green, Regulatory & Information Services Division, Office of Mission Critical Operations, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: green.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this action apply to me?**

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2025–0030, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William

Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP

Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrant,

of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredient
71-1	71	0.5% Permethrin Aerosol Spray	Permethrin (109701/52645-53-1)—(.5%).
100-1728	100	CSI 15-107A I-N-P Cockroach Gel Bait	Indoxacarb (067710/173584-44-6)—(.6%), Novaluron (124002/116714-46-6)—(.1%), Pyriproxyfen (129032/95737-68-1)—(.1%).
228-655	228	Nufarm T-Methyl 70 WSB Fungicide	Thiophanate-methyl (102001/23564-05-8)—(70%).
241-384	241	Lightning D Herbicide	Dicamba, sodium salt (029806/1982-69-0)— (58.9%), Imazapyr (128821/81334-34-1)—(4%), Imazethapyr (128922/81335-77-5)—(12%).
241-393	241	Plateau DG Herbicide	Imazapic (129041/104098-48-8)—(70%).
538-88	538	Systemic Fungicide	Thiophanate-methyl (102001/23564-05-8)— (2.3%).
538-133	538	Proturf Fertilizer Plus DSB Fungicide	Thiophanate-methyl (102001/23564-05-8)— (1.75%).
1001-63	1001	3336 WP Turf and Ornamental Systemic Fungicide	Thiophanate-methyl (102001/23564-05-8)—(50%).
1001-78	1001	3336 Plus Systemic Fungicide	Thiophanate-methyl (102001/23564-05-8)— (19.4%).
1001-80	1001	Premium Systemic Fungicide	Thiophanate-methyl (102001/23564-05-8)— (44.62%).
1001-81	1001	3336(R) 70EG	Thiophanate-methyl (102001/23564-05-8)—(70%).
1001-85	1001	Culver Turf And Ornamental Fungicide	Chlorothalonil (081901/1897-45-6)—(54%).
1381-222	1381	Thiophanate-Methyl 45% F Fungicide	Thiophanate-methyl (102001/23564-05-8)— (46.2%).
1381-228	1381	Thiophanate-Methyl 50% WSB Fungicide	Thiophanate-methyl (102001/23564-05-8)—(50%).
2693-107	2693	Fiberglass Bottomkote Antifouling Paint Black 779	Cuprous oxide (025601/1317-39-1)—(42.75%).
2724-674	2724	Speer PY-Perm Aqueous Insect Killer #2	Permethrin (109701/52645-53-1)—(.2%), Piperonyl butoxide (067501/51-03-6)—(.5%), Pyrethrins (069001/8003-34-7)—(.1%).
5481-583	5481	Durham Ornamental 3.5	Metaldehyde (053001/108-62-3)—(3.5%).
7969-285	7969	Prescription Treatment Brand Phantom Pressur- ized Insecticide.	Chlorfenapyr (129093/122453-73-0)—(.5%).
9386-42	9386	AMA-2500G	Glutaraldehyde (043901/111-30-8)—(25%).
9779-328	9779	Terranil 90DF WSP	Chlorothalonil (081901/1897-45-6)—(90%).
9779-337	9779	Terranil S	Chlorothalonil (081901/1897-45-6)—(19.15%), Sulfur (077501/7704-34-9)—(27.25%).
19713-340	19713	Rabex Livestock Dust	Gardona (cis-isomer) (083702/22248-79-9)—(3%).
34704-870	34704	Chlorothalonil 6	Chlorothalonil (081901/1897-45-6)—(54%).
34704-874	34704	Applause DF Fungicide	Chlorothalonil (081901/1897-45-6)—(90%).
34704-878	34704	Chlorothalonil 90DF	Chlorothalonil (081901/1897-45-6)—(90%).
34704-914	34704	Chlorothalonil 825 Agricultural Fungicide	Chlorothalonil (081901/1897-45-6)—(82.5%).
34704-932	34704	Thio-M 50 WSB Fungicide	Thiophanate-methyl (102001/23564-05-8)—(50%).
42750-350	42750	ST Pre-Mix #9	Azoxystrobin (128810/131860-33-8)—(1.18%), Metalaxyl (113501/57837-19-1)—(8.83%), Thiabendazole (060101/148-79-8)—(2.94%), Thiophanate-methyl (102001/23564-05-8)— (2.35%).
42750-353	42750	ST Pre-Mix #11	Fludioxonil (071503/131341-86-1)—(.81%), Imidacloprid (129099/138261-41-3)—(20.17%), Metalaxyl (113501/57837-19-1)—(5.05%), Thiophanate-methyl (102001/23564-05-8)— (3.28%).
42750-379	42750	ST Pre-Mix #20	Azoxystrobin (128810/131860-33-8)—(.71%), Imidacloprid (129099/138261-41-3)—(21.14%), Metalaxyl (113501/57837-19-1)—(5.28%), Thiabendazole (060101/148-79-8)—(1.76%), Thiophanate-methyl (102001/23564-05-8)— (1.4%).
42750-410	42750	Invicar 2SC Insecticide	Methoxyfenozide (121027/161050-58-4)—(22.6%).
60063-2	60063	Echo 75 WDG	Chlorothalonil (081901/1897-45-6)—(75%).
60063-16	60063	Echo Home Garden Fungicide	Chlorothalonil (081901/1897-45-6)—(12.5%).
60063-30	60063	Echo RTU	Chlorothalonil (081901/1897-45-6)—(.087%).
60063-36	60063	Echo Ultimate ETQ	Chlorothalonil (081901/1897-45-6)—(82.5%).

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredient
60063–47	60063	Echo 378/Cymoxanil 50	Chlorothalonil (081901/1897–45–6)—(31.51%), Cymoxanil (129106/57966–95–7)—(4.2%).
60063–49	60063	Muscle ADV	Chlorothalonil (081901/1897–45–6)—(30.51%), Tebuconazole (128997/107534–96–3)—(8.47%).
60063–55	60063	CTL + IPRO Turf and Ornamental Fungicide	Chlorothalonil (081901/1897–45–6)—(28%), Iprodione (109801/36734–19–7)—(14%).
60063–82	60063	Tetraconazole + Thiophanate-Methyl	Tetraconazole (120603/112281–77–3)—(4.2%), Thiophanate-methyl (102001/23564–05–8)— (21.27%).
60063–84	60063	Tetraconazole TM	Tetraconazole (120603/112281–77–3)—(4.2%), Thiophanate-methyl (102001/23564–05–8)— (21.27%).
83070–1	83070	Tee-Off 4.5F	Thiophanate-methyl (102001/23564–05–8)— (46.2%).
83070–12	83070	Mazinga Fungicide	Chlorothalonil (081901/1897–45–6)—(27.69%), Tetraconazole (120603/112281–77–3)—(2.09%).
83070–13	83070	Andiamo Duo	Tetraconazole (120603/112281–77–3)—(4.2%), Thiophanate-methyl (102001/23564–05–8)— (21.27%).
89442–6	89442	Chlorothalonil 82.5DF Select	Chlorothalonil (081901/1897–45–6)—(82.5%).
89442–9	89442	Chlorothalonil 720 Select	Chlorothalonil (081901/1897–45–6)—(54%).
92044–2	92044	Chlorothalonil 720SC	Chlorothalonil (081901/1897–45–6)—(54%).
92044–3	92044	Chlorothalonil 82.5 WDG	Chlorothalonil (081901/1897–45–6)—(82.5%).
100522–11	100522	SA Pendimethalin Technical	Pendimethalin (108501/40487–42–1)—(97.2%).
AK–160001	67690	SP 1908 Aquatic Herbicide	Fluridone (112900/59756–60–4)—(6.3%).
AR–130003	279	Spartan Charge Herbicide	Carfentrazone-ethyl (128712/128639–02–1)— (3.53%), Sulfentrazone (129081/122836–35–5)— (31.77%).
AR–190001	100	Gramoxone SL 2.0	Paraquat dichloride (061601/1910–42–5)—(30.1%).
MO–150001	87290	Willowood Clomazone 3ME	Clomazone (125401/81777–89–1)—(31.1%).
OR–090006	62719	Rally 40WSP	Myclobutanil (128857/88671–89–0)—(40%).
OR–140011	34704	LPI Glufosinate 280	Glufosinate (128850/77182–82–2)—(24.5%).
OR–150004	352	Curzate 60DF	Cymoxanil (129106/57966–95–7)—(60%).
OR–150008	279	Zeus XC Herbicide (Alternate)	Sulfentrazone (129081/122836–35–5)—(39.6%).
OR–180007	51036	Kumulus DF	Sulfur (077501/7704–34–9)—(80%).
OR–190006	10163	Eptam 7E Selective Herbicide	Carbamothioic acid, dipropyl-, S-ethyl ester (041401/759–94–4)—(87.8%).
OR–210002	56228	Compound DRC–1339 Concentrate-Livestock Nest & Fodder Depredations	Starlicide (009901/7745–89–3)—(97%).
OR–220004	352	Dupont Fontelis Fungicide	Penthiopyrad (090112/183675–82–3)—(20.4%).
WA–070008	70506	Acramite-4SC	Bifenazate (000586/149877–41–8)—(43.2%).
WA–150003	70506	Acramite-4SC	Bifenazate (000586/149877–41–8)—(43.2%).
WI–210002	60063	Echo 720	Chlorothalonil (081901/1897–45–6)—(54%).
WI–210003	60063	Echo 90DF	Chlorothalonil (081901/1897–45–6)—(90%).
WI–210004	60063	Echo ZN	Chlorothalonil (081901/1897–45–6)—(38.5%).

The registrants of products identified in Table 1A of this unit have requested 18-months to sell existing stocks of those products.

TABLE 1A—PRODUCT CANCELLATIONS, CONT'D.

Registration No.	Company No.	Product name	Active ingredient
6836–389	6836	Barrachlor Fungicide	Chlorothalonil (081901/1897–45–6)—(54%).
70506–43	70506	Surflan A.S. Herbicide	Oryzalin (104201/19044–88–3)—(40.4%).
70506–46	70506	Surflan Dry Flowable	Oryzalin (104201/19044–88–3)—(85%).
70506–458	70506	Ethephon 6	Ethephon (099801/16672–87–0)—(55.4%).
70506–459	70506	Ethephon 2#	Ethephon (099801/16672–87–0)—(21.7%).
70506–304	70506	Andersons Golf Products Fungo Flo	Thiophanate-methyl (102001/23564–05–8)—(45%).
70506–558	70506	Doubletake	Diflubenazuron (108201/35367–38–5)—(22%), lambda- Cyhalothrin (128897/91465–08–6)—(11%).
70506–561	70506	Doubletake SE	Diflubenazuron (108201/35367–38–5)—(22%), lambda- Cyhalothrin (128897/91465–08–6)—(11%).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of

this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration

numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA, company No.	Company name and address
71	L. Perrigo Company, 515 Eastern Avenue, Allegan, MI 49010.
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
228	Nufarm Americas, Inc., 4000 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.
241	BASF Agricultural Solutions US, LLC, 2 TW Alexander Drive, Research Triangle Park, NC 27713.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
538	Scotts Company, The, 14111 Scottslawn Road, Marysville, OH 43041.
1001	Cleary Chemicals, LLC, Agent Name: Nufarm Americas, Inc., 4000 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
2693	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
2724	Wellmark International, 1501 E Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
5481	AMVAC Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706.
6836	Arxada, LLC, 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
7969	BASF Agricultural Solutions US, LLC, 2 TW Alexander Drive, Research Triangle Park, NC 27713.
9386	Kemira Water Solutions, Inc., Agent Name: Ramboll, 4245 North Fairfax Drive, Suite 700, Arlington, VA 22203.
9779	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
10163	Gowan Company, LLC, 370 S Main St., Yuma, AZ 85364.
19713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–0327.
34704	Loveland Products, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332.
42750	Albaugh, LLC, 1525 NE 36th Street, Ankeny, IA 50021.
51036	BASF Agricultural Solutions US, LLC, 2 TW Alexander Drive, Research Triangle Park, NC 27713.
56228	U.S. Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737.
60063	Sipcam Agro USA, Inc., 2525 Meridian Pkwy., Durham, NC 27713.
62719	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
67690	SePRO Corporation, 11550 N Meridian Street, Suite 600, Carmel, IN 46032.
70506	MacDermid Agricultural Solutions, Inc., Agent Name: UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
83070	Advan, LLC, 2525 Meridian Pkwy., Durham, NC 27713.
87290	Generic Crop Science, LLC, Agent Name: SynTech Research Group, 7217 Lancaster Pike, Suite A, P.O. Box 640, Hockessin, DE 19707.
89442	Prime Source, A Division of Albaugh, LLC, 1525 NE 36th Street, Ankeny, IA 50021.
92044	CAC Chemical Americas, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 535 Dock Street, Suite 211, Tacoma, WA 98402.
100522	Sullution Agro, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 535 Dock Street, Suite 211, Tacoma, WA 98402.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received two comments in response to the July 31, 2025, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of the products listed in Table 1 & Table 1A of Unit II, including one that agreed with the cancellations and the second comment requesting EPA to consider the effect of the requested cancellations on agricultural and public health users. The Agency's response is as follows. As required by FIFRA Section 6(f), the Agency evaluates the potential impacts of all voluntary requests to cancel pesticide products and uses, and may modify or reconsider the cancellation as appropriate. Additionally, this order and all similar FIFRA Section 6(f) cancellation orders include provisions clearly specifying allowable sale, distribution, and use of cancelled products.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 & Table 1A of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 & Table 1A of Unit II, are canceled. The effective date of the cancellations that are the subject of this notice is February 10, 2026. Any distribution, sale, or use of existing stocks of the products identified in Table 1 & Table 1A of Unit II, in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI, will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the

Federal Register. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of July 31, 2025, (90 FR 36046) (FRL–12881–01). The comment period closed on September 02, 2025.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrant may continue to sell and distribute existing stocks of the products listed in Table 1 of Unit II, until February 10, 2027, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrant is prohibited from selling or distributing the products listed in Table 1 of Unit II, except for export in accordance with FIFRA

section 17 (7 U.S.C. 136o), or proper disposal.

For the products listed in Table 1A, the registrants have requested 18-months to sell existing stocks of those products. The registrants may continue to sell and distribute existing stocks of the products listed in Table 1A of Unit II, until August 10, 2027, a period of 18 months after publication of the cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing the products listed in Table 1A of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of products listed in Table 1 & Table 1A of Unit II, until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 29, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2026-02572 Filed 2-9-26; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2024-0093; FRL-12542-02-OCSPP]

Cancellation Order for Certain Pesticide Registrations and/or Amendments To Terminate Uses (From August 11, 2025, Notice)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and/or amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an August 11, 2025, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II, to voluntarily cancel and/or amend to terminate uses of these product registrations. In the August 11, 2025, notice, EPA indicated that it would issue an order implementing the cancellations and/or amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one anonymous comment on the notice. Further, the registrants did not withdraw their requests. The registrations 279-9546, 94396-15 and 94396-25 were already cancelled on a separate notice; therefore, they have been excluded from this notice. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and/or amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and/or amendments are effective February 10, 2026.

FOR FURTHER INFORMATION CONTACT:

Christopher Green, Regulatory & Information Services Division, Office of Mission Critical Operations, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-2707; email address: green.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2024-0093, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. What action is the Agency taking?

This notice announces the cancellations and/or amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
228-335	228	Riverdale Horsepower 8000 Lawn Weed Killer.	Dicamba, dimethylamine salt (029802/2300-66-5)—(1.08%), MCPA, dimethylamine salt (030516/2039-46-5)—(10.97%), Triclopyr, triethylamine salt (116002/57213-69-1)—(1.25%).
228-371	228	Riverdale MTCA Premium Selective Herbicide.	Clpyralid (117403/1702-17-6)—(1.3%), MCPA, dimethylamine salt (030516/2039-46-5)—(37.9%), Triclopyr, triethylamine salt (116002/57213-69-1)—(3.8%).
228-420	228	Chaser Ultra 2 Selective Herbicide.	2,4-DP-p, DMA salt (031403/104786-87-0)—(8.1%), Fluroxypyr 1-methylheptyl ester (128968/81406-37-3)—(9.78%), MCPA, dimethylamine salt (030516/2039-46-5)—(41.6%).
228-424	228	Horsepower Concentrate	Dicamba, dimethylamine salt (029802/2300-66-5)—(1.35%), MCPA, dimethylamine salt (030516/2039-46-5)—(13.72%), Triclopyr, triethylamine salt (116002/57213-69-1)—(1.56%).
279-3558	279	Accurate Extra Herbicide	Metsulfuron-methyl (122010/74223-64-6)—(15%), Thifensulfuron (128845/79277-27-3)—(37.5%), Tribenuron-methyl (128887/101200-48-0)—(18.75%).
499-556	499	TC-326	Chlorfenapyr (129093/122453-73-0)—(5%), Pyriproxyfen (129032/95737-68-1)—(0.05%).
5383-146	5383	Troyshield FSP40	Sodium pyriproxyfen (088004/15922-78-8)—(40%).
5481-477	5481	RID-A-VEC	Metam-sodium (039003/137-42-8)—(42%).
7969-324	7969	Kixor Herbicide	Saflufenacil (118203/372137-35-4)—(29.74%).

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
7969–332	7969	Optill Pro Powered by Kixor Herbicide.	Imazethapyr (128922/81335–77–5)—(50.2%), Saflufenacil (118203/372137–35–4)—(17.8%), dimethenamid-P (120051/163515–14–8)—(63.9%).
10779–1	10779	Instant Power Sewer Line Root Destroyer.	Copper sulfate pentahydrate (024401/7758–99–8)—(99%).
34688–86	34688	Triameen Y12D Preservative	1,3-Propanediamine, N-(3-aminopropyl)-N-dodecyl- (067300/2372–82–9)—(91.4%).
67979–9	67979	COT102 X COT67B Cotton Seed.	Bacillus thuringiensis FLCry1Ab protein and the genetic material necessary for its production (vector pNOV4641/pNOV1914) in Event COT67B cotton (SYN–IR67B–1) (016486/)—(0.041%), Bacillus thuringiensis Vip3Aa19 protein and the genetic material necessary for its production (vector pCOT1) in Event COT102 cotton (SYN–IR102–7) (016484/)—(0.036%).
67979–21	67979	COT67B Cotton	Bacillus thuringiensis FLCry1Ab protein and the genetic material necessary for its production (vector pNOV4641/pNOV1914) in Event COT67B cotton (SYN–IR67B–1) (016486/)—(0.029%).
70060–12	70060	CSR–2	Sodium chlorite (020502/7758–19–2)—(5%).
70060–13	70060	CSR–1	Sodium chlorite (020502/7758–19–2)—(5%).
70060–32	70060	Aseptrol CSR Wax Paper	Sodium chlorite (020502/7758–19–2)—(63%).
72056–2	72056	Clethodim 2EC Herbicide	Clethodim (121011/99129–21–2)—(26.4%).
72056–3	72056	Clethodim Technical (37% MUP).	Clethodim (121011/99129–21–2)—(37%).
82633–66	82633	Sharda Thiodicarb Technical ..	Thiodicarb (114501/59669–26–0)—(99%).
87243–4	87243	Amiflex	Amitraz (106201/33089–61–1)—(2%).
100522–11	100522	SA Pendimethalin Technical ...	Pendimethalin (108501/40487–42–1)—(97.2%).
AK–220001	67690	Sonar Genesis	Fluridone (112900/59756–60–4)—(6.3%).
IN–150001	279	AIM EC	Carfentrazone-ethyl (128712/128639–02–1)—(22.3%).
LA–210003	5481	Envoke Herbicide	2-Pyridinesulfonamide, N-[[[4,6-dimethoxy-2-pyrimidinyl]amino]carbonyl]-3-(2,2,2-trifluoroethoxy)-, monosodium salt, monohydrate (119009/290332–10–4)—(75%).
OR–150009	8033	Topsin M WSB	Thiophanate-methyl (102001/23564–05–8)—(70%).
OR–170001	70506	Penncozeb 75 DF	Mancozeb (014504/8018–01–7)—(75%).
OR–190013	100	Northstar Herbicide	Dicamba, sodium salt (029806/1982–69–0)—(43.9%), Primisulfuron-methyl (128973/86209–51–0)—(7.5%).
VT–160001	100	Reflex Herbicide	Sodium salt of fomesafen (123802/108731–70–0)—(22.8%).
WA–180008	10163	GWN–10073–10120	Copper hydroxide (023401/20427–59–2)—(5%).

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
42750–58	42750	Glyphosate 62%	Glyphosate, isopropylamine salt (103601/38641–94–0)—(62%).	Tobacco use.
85678–4	85678	Ethephon 78% MUP	Ethephon (099801/16672–87–0)—(77.6%).	Residential turf/lawns; institutional turf; parks, recreational fields & sod farms use.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1

and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA

registration numbers of the products listed above.

TABLE 3—REGISTRANTS OF CANCELLED AND/OR AMENDED PRODUCTS

Company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
228	NuFarm Americas, Inc., 4000 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
499	BASF Agricultural Solutions US, LLC, 2 T.W. Alexander Drive, P.O. Box 13528, Research Triangle Park, NC 27709.
5383	Troy Chemical Corporation, Agent Name: Troy Corporation, 8 Vreeland Road, Florham Park, NJ 07932.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
7969	BASF Agricultural Solutions US, LLC, Agricultural Products, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709.
8033	Nippon Soda Co., Ltd., Agent Name: Nisso America, Inc., 379 Thornall Street, 5th Floor, Edison, NJ 08837.
10163	Gowan Company, LLC, 370 S. Main St., Yuma, AZ 85366.
10779	Instant Power Corporation, 1255 Viceroy, Dallas, TX 75247.
34688	Nouryon Surface Chemistry, LLC, 100 Matsonford Road, Building 5, Radnor, PA 19087.
42750	Albaugh, LLC, 1525 NE 36th Street, Ankeny, IA 50021.
67690	Sepro Corporation, 11550 N. Meridian Street, Suite 600, Carmel, IN 46032.
67979	Syngenta Seeds, LLC—Field Crops—NAFTA, 9 Davis Drive, Research Triangle Park, NC 27709.
70060	BASF Corporation, Attention: Janet Cerra, 100 Park Avenue, Florham Park, NJ 07932.
70506	UPL NA, Inc., P.O. Box 12219, Research Triangle Park, NC 27709.
72056	Nisso BASF Agro Co., Ltd., Agent Name: Compliance Services International, 7501 Bridgeport Way West, Lakewood, WA 98499–2423.
82633	Sharda Cropchem Limited, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box: 640, Hockessin, DE 19707–0640.
85678	RedEagle International, LLC, Agent Name: Wagner Regulatory Associates, Inc., 7217 Lancaster Pike, Suite A, P.O. Box 640, Hockessin, DE 19707.

TABLE 3—REGISTRANTS OF CANCELLED AND/OR AMENDED PRODUCTS—Continued

Company No.	Company name and address
87243	Veto-Pharma S.A.S., Agent Name: Technology Sciences Group, Inc., 1150 18th St. NW, Suite 475, Washington, DC 20036.
100522	Sullution Agro, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 535 Dock Street, Suite 211, Tacoma, WA 98402.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one anonymous comment in response to the August 11, 2025, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and/or amendments to terminate uses of products listed in Tables 1 and 2 of Unit II. The comment states that this action should terminate the pesticides listed in Unit II and remove the current registrants that are currently listed as being on the list dispensing the Unit II Chemicals. The mislabeled chemicals and tainted products pose potential health risks and could harm our children and pets. The Agency's response is as follows. As noted in the order, the pesticide products listed in Table 1, and the specified uses of the products listed in Table 2 of Unit II are being canceled pursuant to the registrant's voluntary request for cancellation. This action does not address any potential health or environmental risks from pesticide use. However, pursuant to FIFRA and the FFDCA, the EPA continually evaluates existing and proposed pesticide products to ensure that, when applied as instructed, those pesticides will not generally cause unreasonable risk to human health or the environment.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and/or amendments to terminate uses of registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II, are canceled and/or amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is February 10, 2026. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II, in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI, will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of August 11, 2025 (90 FR 38645) (FRL-12542-01-OCSP). The comment period closed on September 10, 2025.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

For: 5383-146

For 5383-146, Troy Chemical Corporation, the registrant of the product subject to this cancellation notice, requested an existing stocks provision allowing the continued sale and distribution of the affected product until August 10, 2027, a period of 18 months after publication of the cancellation order in this **Federal Register**. Thereafter, the registrant is prohibited from selling or distributing product 5383-146 identified in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary cancellations, the registrants may continue to sell and distribute existing stocks of products listed in Table 1 until February 10, 2027, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II, under the previously approved labeling until August 10, 2027, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and/or products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and/or terminated uses.

Authority: 7 U.S.C. 136 et seq.

Dated: January 29, 2026.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2026-02569 Filed 2-9-26; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0346; FR ID 330269]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections.

Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 13, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0346.

Title: Section 78.27, License Conditions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions.

Frequency of Response: Annual reporting requirement; on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 Section 154(i) of the Communications Act of 1934, as amended.

Number of Respondents and Responses: 4 respondents; 4 responses.

Estimated Time per Response: 10 mins. (0.166 hrs.).

Total Annual Burden: 1 hour.

Total Annual Cost: None.

Needs and Uses: The information collection requirements contained in 47 CFR 78.27(b)(1) require the licensee of a Cable Television Relay Service (CARS) station to notify the Commission in writing when the station commences

operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited. The information collection requirements contained in 47 CFR 78.27(b)(2) require CARS licensees needing additional time to complete construction of the station and commence operation shall request an extension of time 30 days before the expiration of the one year construction period. Exceptions to the 30-day advance filing requirement may be granted where unanticipated delays occur.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–02615 Filed 2–9–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1211; FR ID 330221]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before March 12, 2026.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed information collection to Cathy

Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–1211.

Title: Sections 96.17; 96.21; 96.23; 96.25; 96.33; 96.35; 96.39; 96.41; 96.43; 96.45; 96.51; 96.57; 96.59; 96.61; 96.63; 96.67, Commercial Operations in the 3550–3650 MHz Band.

Form Number: N/A.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents: 110,782 respondents; 226,099 responses.

Estimated Time per Response: .25 to 1 hour.

Frequency of Response: One-time and on occasion reporting requirements; other reporting requirements—as-needed basis for equipment safety certification that is no longer in use, and consistently (likely daily) responses automated via the device.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for, these collections are contained in 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302(a), 303, 304, 307(e), and 316 of the Communications Act of 1934.

Total Annual Burden: 64,561 hours.

Total Annual Cost: \$13,213,975.

Needs and Uses: The FCC adopted an Order on Reconsideration and Second Report and Order, FCC 16–55, that amends rules established in the First Report and Order, FCC 15–47, for commercial use of 150 megahertz in the 3550–3700 MHz (3.5 GHz) band and a new Citizens Broadband Radio Service, on April 28, 2016, published at 81 FR 49023 (July 26, 2016). The rule changes and information requirements contained in the First Report and Order are also approved under this Office of Management and Budget (OMB) control number and have not changed since they were last approved by OMB.

The Commission also received approval from OMB for the information collection requirements contained in FCC 16–55. The amendments contained in the Second Report and Order create additional capacity for wireless broadband by adopting a new approach to spectrum management to facilitate more intensive spectrum sharing between commercial and federal users and among multiple tiers of commercial users. The Spectrum Access System (SAS) will use the information to authorize and coordinate spectrum use for Citizen Broadband Radio Service Devices (CBSDs). The Commission will use the information to coordinate among the spectrum tiers and determine

Protection Areas for Priority Access Licensees (PALs).

The following is a description of the information collection requirements for is approved under this collection:

Section 96.25(c)(1)(i) requires PALs to inform the SAS if a CBSD is no longer in use.

Section 96.25(c)(2)(i) creates a default protection contour for any CBSD at the outer limit of the PAL Protection Area, but allows a PAL to self-report a contour smaller than that established by the SAS. These rules which contain information collection requirements are designed to provide for flexible use of this spectrum, while managing three tiers of users in the band, and create a low-cost entry point for a wide array of users. The rules will encourage innovation and investment in mobile broadband use in this spectrum while protecting incumbent users. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–02614 Filed 2–9–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0727; FR ID 330266]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 13, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0727.

Title: Section 73.213, Grandfathered Short-Spaced Stations.

Form Number(s): Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: 0.5 hours–0.83 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 20 hours.

Total Annual Costs: \$3,750.

Needs and Uses: The information collection requirement contained in 47 CFR 73.213 requires licensees of grandfathered short-spaced FM stations seeking to modify or relocate their stations to provide a showing demonstrating that there is no increase in either the total predicted interference area or the associated population (caused or received) with respect to all grandfathered stations or increase the interference caused to any individual stations. Applicants must demonstrate that any new area predicted to lose service as a result of interference has adequate service remaining. In addition, licensees are required to serve a copy of any application for co-channel or first-adjacent channel stations proposing predicted interference caused in any area where interference is not currently predicted to be caused upon the licensee(s) of the affected short-spaced

station(s). Commission staff uses the data to determine if the public interest will be served and that existing levels of interference will not be increased to other licensed stations. Providing copies of application(s) to affected licensee(s) will enable potentially affected parties to examine the proposals and provide them an opportunity to file informal objections against such applications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026-02617 Filed 2-9-26; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0944; OMB 3060-1156; FR ID 329893]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before April 13, 2026. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0944.

Title: Cable Landing License Act, Executive Order 10530, 47 CFR 1.70000-1.70024, 1.40001, 1.40003.

Form Number: SCL-LIC—Submarine Cable Landing License Application (revising form); SCL-STA—Submarine Cable Landing License Special Temporary Authority (revising form); SCL-FCN—Submarine Cable Landing License Foreign Carrier Affiliation (revising form); SCL-ASG/TC—Submarine Cable Landing License Assignment or Transfer of Control of License (revising form); SCL-LPN—Submarine Cable Landing License Landing Point Notification (revising form); SCL-MOD—Submarine Cable Landing License Modification (revising form); SCL-RWL—Submarine Cable Landing License Renewal (revising form); Foreign Adversary Annual Report (new form); One-Time Covered List Certification (new form); One-Time Cybersecurity and Physical Security Certification (new form).

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for profit entities and State, Local or Tribal Governments.

Number of Respondents and Responses: 429 respondents; 472 responses.

Estimated Time per Response: 4 to 320 hours.

Frequency of Response: On occasion reporting requirement, Annual reporting requirement, One time reporting requirement, Recordkeeping requirement, and third-party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i), 4(j), 201-255, 303(r), 403, 413 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-255, 303(r), 403, 413, and the Cable Landing License Act of 1921, 47 U.S.C. 34-39, and Executive Order No. 10530,

Section 5(a) (May 12, 1954) reprinted as amended in 3 U.S.C. 301.

Total Annual Burden: 14,180 hours.

Total Annual Cost: \$4,354,490.

Needs and Uses: The Federal Communications Commission (Commission) is requesting that the Office of Management and Budget (OMB) approve revisions to OMB Control No. 3060-0944 to incorporate the requirements adopted by the Commission in the *Submarine Cable Report and Order*, FCC 25-49. The *Submarine Cable Report and Order* modernized the Commission's submarine cable rules to facilitate infrastructure deployment, while strengthening national security. Submarine cables serve as the backbone of global communications, carrying 99% of global internet traffic. To support growing demand and address evolving national security threats, the Commission updated its rules and procedures to streamline and improve the timeliness and transparency of its submarine cable licensing process. The Commission also modernized the process by identifying entities that pose a threat to submarine cable systems, such as foreign adversaries, and adopted common sense measures to preclude them from accessing the nation's communications networks. The updates will provide greater certainty for applicants, while making targeted improvements to address national security threats.

Specifically, in the *Submarine Cable Report and Order*, the Commission clarified when a cable landing license is required under the Cable Landing License Act to provide regulatory certainty to submarine cable owners and operators. The Commission updated application requirements and definitions to provide a clear regulatory framework, while also making targeted adjustments for national security purposes. The Commission modernized the definition of "submarine cable system" to better reflect the range of technological advancements and components of current systems. The Commission adopted foreign adversary definitions to protect the security of submarine cables by presumptively precluding the grant of applications filed by an applicant owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary and/or identified on the Commission's Covered List, among others; adopting a presumption that denial of an application is warranted where an applicant seeks to land a submarine cable in a foreign adversary country or add a new landing located in a foreign adversary country; and

prohibiting licensees from entering into certain IRU or capacity lease arrangements, where it would give a foreign adversary-controlled entity the ability to install, own, or manage Submarine Line Terminal Equipment (SLTE) on a submarine cable landing in the United States.

On September 11, 2025, OMB approved a non-substantive change approval request related to the *Submarine Cable Report and Order*. On October 27, 2025, the Commission published a notice in the **Federal Register** announcing the effective date of the rules adopted in the *Submarine Cable Report and Order* except for amendatory instructions (§ 1.767), 7 (§ 1.768), 10 (§ 1.70002), 11 (§ 1.70003), 12 (§§ 1.70005 and 1.70006), 13 (§ 1.70007), 14 (§§ 1.70008 and 1.70009), 15 (§§ 1.70011 through 1.70013), 16 (§ 1.70016), 17 (§ 1.70017), 18 (§ 1.70020), 19 (§§ 1.70023 and 1.70024), and 22 (§ 43.82).

Relatedly, the Commission transitioned its International Communications Filing System (ICFS) to a new cloud-based platform in June 2025. Following OMB's approval of modifications to this information collection, the Commission will develop and submit for OMB review revised submarine cable application forms and new forms to comply with the new requirements. Until the new and revised electronic forms are approved by OMB, submarine cable applicants and licensees will be required to provide the information required by the *Submarine Cable Report and Order* by submitting the current application forms and providing additional information as required in an attachment filed in ICFS.

OMB Control Number: 3060–1156.

Title: 47 CFR 43.82, Annual Circuit Capacity Reports.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities and State, Local or Tribal Governments.

Number of Respondents and Responses: 133 respondents; 266 responses.

Estimated Time per Response: 1 to 20 hours.

Frequency of Response: Annual reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i), 4(j), 201–255, 303(r), 403, 413 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–255, 303(r), 403, 413, and the Cable

Landing License Act of 1921, 47 U.S.C. 34–39, and Executive Order No. 10530, Section 5(a) (May 12, 1954) reprinted as amended in 3 U.S.C. 301.

Total Annual Burden: 2,793 hours.

Total Annual Cost: \$12,000.

Needs and Uses: The Federal Communications Commission (Commission) seeks approval from the Office of Management and Budget (OMB) for the revised information collection for the annual submarine cable circuit capacity reports required pursuant to the Cable Landing License Act of 1921 and section 43.82 of the Commission's rules. On August 7, 2025, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (*Submarine Report and Order*), FCC 25–49, that modernized the Commission's submarine cable rules, including adopting new rules regarding the annual circuit capacity reports. With respect to the annual submarine cable circuit capacity data collection, the Commission modified the circuit capacity reporting requirements to enhance the quality and usefulness of the data for national security and other purposes, provide greater clarity to licensees and common carriers (Filing Entities) on the reporting requirements for Filing Entities, and eliminated duplicative burdens.

Specifically, in the *Submarine Report and Order*, the Commission streamlined the rules and eliminated the requirement for licensees to file a Cable Operator Report about the capacity on a cable and instead required Filing Entities to file one report, the Capacity Holder Report, on an individual basis. The Commission retained important information from the Cable Operator Report by integrating and clarifying information about available, planned, and design capacity that was previously reported in the Cable Operator Report. The Commission required Filing Entities to report their capacity on domestic cables, as the lack of this information created a critical gap regarding the ownership and use of capacity on submarine cables regulated by the Commission. The Commission also required Filing Entities to identify, with respect to each sale, lease, or purchase of a fiber pair and/or spectrum, the submarine cable, the U.S. and foreign landing points of the fiber pair and/or spectrum, and the entity that manages the fiber pair and/or spectrum, if different from the entity that owns it. The Commission also required Filing Entities to provide certain information about their submarine line terminal equipment (SLTEs) in the Capacity Holder Report as SLTEs are among the most important

equipment associated with the submarine cable system for national security and law enforcement purposes.

Additionally, the Commission allowed any subsidiary, parent entity, or affiliate to file the Capacity Holder Report on behalf of a licensee(s) or common carrier(s), so long as the legal name of the licensee or common carrier is identified in the report and an officer of the licensee or common carrier certifies that the information in the report is accurate and complete. The Commission codified a compliance provision in section 43.82 of the rules. The Commission modified section 43.82 of the rules to allow the Commission to share with the Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector, Department of Homeland Security, and the State Department the capacity data filed on a confidential basis without the pre-notification requirements of 47 CFR 0.442(d).

The Commission directed its Office of International Affairs to revise the Filing Manual to conform with the changes adopted in the *Submarine Cable Report and Order*.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–02545 Filed 2–9–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of the agreement are available through the Commission's website (www.fmc.gov) or by contacting the Office of General Counsel at (202) 523–5740 or GeneralCounsel@fmc.gov.

Agreement No.: 201347–002.

Agreement Name: Sallaum/Hyundai Glovis Space Charter Agreement.

Parties: Hyundai Glovis Co. Ltd.; Sallaum Lines Ltd.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Amendment updates the name and address of Sallaum; updates the address of Hyundai Glovis; revises the amount of space being chartered under the Agreement; adds a new Article 5.1(c) which updates and adds to the Agreement authority contained in the Hyundai Glovis/Sallaum Cooperative Working Agreement, No. 012443 (which the parties will terminate when the amendment becomes effective); and updates Article 9 of the Agreement. The amendment also restates the Agreement.

Proposed Effective Date: 1/30/2026.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/33505>.

Dated: February 6, 2026.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2026-02621 Filed 2-9-26; 8:45 am]

BILLING CODE 6730-02-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 25, 2026.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166-2034. Comments can also be sent electronically to Comments.applications@stls.frb.org:

1. *Gayla Shanks; Billy Shanks; Dustin Shanks, individually and as custodian of his one minor child; Holly Tanner, individually and as custodian of her one minor child; and Kelly Downs, individually and as custodian of her two minor children, all of Trenton, Kentucky; as the Shanks Family Control Group, a group acting in concert, to retain voting shares of Todd Bancshares, Inc., and thereby indirectly retain voting shares of United Southern Bank, both of Hopkinsville, Kentucky.*

2. *Dorothy Buckley Estate, Pat Sholar and Augustus Sholar as executors; Pat Sholar; Ann Osborn; Hank Sholar; Jean Ann Sholar; Augustus Sholar; Mary Kathryn Sholar, individually and as custodian of her two minor children; Will Osborn; Patrick Hampton Osborn; and Briann Griffith, individually and as custodian of her two minor children, all of Trenton, Kentucky, as the Buckley Family Control Group, a group acting in concert, to retain voting shares of Todd Bancshares, Inc., and thereby indirectly retain voting shares of United Southern Bank, both of Hopkinsville, Kentucky.*

3. *Paul Hampton, Chad Hampton, Diana Hampton, and Jase Paul Hampton, all of Pembroke, Kentucky, and Chandler Hampton, Peyton Blackmon, and Paul Reno Hampton, Jr., all of Trenton, Kentucky; as the Hampton Family Control Group, a group acting in concert, to retain voting shares of Todd Bancshares, Inc., and thereby indirectly retain voting shares of United Southern Bank, both of Hopkinsville, Kentucky.*

4. *BAMB Limited Partnership, LLLP, with Nina Marie ("Molly") Harsh Burns Revocable Trust and the Robert L. Burns Revocable Trust as general partners, and Nina Marie "Molly" Harsh Burns as trustee of both general partner trusts, all of Magnolia, Arkansas; to join the Harsh Family Control Group, a group acting in concert, to retain voting shares of Magnolia Banking Corporation, and thereby indirectly retain voting shares of Farmers Bank & Trust Company, both of Magnolia, Arkansas.*

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-02602 Filed 2-9-26; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10476]

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 13, 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 Collections

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medical Loss Ratio (MLR) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Sections 1857(e)(4) and 1860D-12 of the Social Security Act (which incorporates section 1857(e)(4) by reference), and implementing regulations at 42 CFR part 422, subpart X, and part 423, subpart X, set forth a requirement that Medicare Advantage (MA) organizations and Part D Prescription Drug Plan (PDP) sponsors

report the medical loss ratio (MLR) for each MA or Part D contract to CMS for each contract year, and that such MLRs must meet a statutory standard of 85 percent. MA organizations and Part D sponsors are subject to sanctions for failure to meet the 85 percent minimum MLR requirement, including remittance of funds to CMS, a prohibition on enrolling new members, and, ultimately, contract termination. CMS uses the submitted information to determine whether an MA or Part D contract has satisfied the minimum MLR requirement with respect to a contract year, and whether the contract must remit funds to CMS and/or face additional sanctions. *Form Number:* CMS-10476 (OMB control number: 0938-1232); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 660; *Total Annual Responses:* 660; *Total Annual Hours:* 40,356. (For policy questions regarding this collection contact Deven Gosalia at 410-786-8264.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-02603 Filed 2-9-26; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 8-10, 2026.

Time: 7:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Address: Rocky Mountain Laboratories, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Building A, Seminar Room, Hamilton, MT 59840.

Meeting Format: In Person.

Contact Person: Amy Collins, NIAID Committee Manager, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 4G39, Bethesda, MD 20892, 301-402-7684, amy.collins@nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: February 5, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026-02544 Filed 2-9-26; 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: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: March 10-11, 2026.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Eileen Marie Moore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20892, (301) 594–8928, eileen.moore@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Innovative Research in Cancer Nanotechnology.

Date: March 12–13, 2026.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 435–1047, krishna@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Exploratory/Developmental Research on Guillain Barre Syndrome (GBS) and Chronic Inflammatory Demyelinating Polyneuropathy (CIDP).

Date: March 13, 2026.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Aleksey G. Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, (301) 435–1042, aleksey.kazantsev@nih.gov.

Name of Committee: Cell Biology Integrated Review Group; Cell Structure and Function 1 Study Section.

Date: March 13, 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: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301.402.3717, jessica.smith6@nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 5, 2026.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–02543 Filed 2–9–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516, #O2509–014–004–125222]

Call for Nominations for the National Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for six positions on the Wild Horse and Burro Advisory Board. The Board provides advice concerning the management, protection, and control of wild free-roaming horses and burros on public lands administered by the Department of the Interior, through the Bureau of Land Management (BLM), and the Department of Agriculture, through the U.S. Forest Service.

DATES: Nominations must be post marked or submitted to the **ADDRESSES** below no later than April 13, 2026.

ADDRESSES: Nominations can be sent via email, mail, or messenger delivery (U.S. Postal Service or FedEx preferred). Please consider emailing PDF documents to BLM_WHB_AB_Nominations@blm.gov. Packages sent through the mail or messenger delivery should be addressed as follows: U.S. Department of the Interior, Bureau of Land Management, Attn: HQ 200, C/O Wild Horses and Burro Division, 1849 C St. NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Allison Niebauer, Wild Horse and Burro Program Coordinator, telephone: 571–540–0430, email: aniebauer@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Members of the Board serve without compensation; however, while away from their homes or regular places of business, Board members engaged in Board business approved by the Designated Federal Officer (DFO) may be allowed travel expenses, including per diem in lieu of subsistence under 5 U.S.C. 5703, in the same manner as persons employed intermittently in government service. Nominations for a term of 3 years are needed to represent the following categories of interest:

- Wild Horse and Burro Advocacy (vacant position)
- Veterinary Medicine (vacant position)
- Public Interest (with special knowledge of natural resources management) (vacant position)
- Humane Advocacy (to be seated after 9/6/2026)
- Livestock Management (to be seated after 9/6/2026)
- Wildlife Management (to be seated after 9/6/2026)

The Board will meet at least once annually. The DFO may call additional meetings in connection with special needs for advice. Individuals may nominate themselves or others. Any individual or organization may nominate one or more persons to serve on the Board.

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Departments of the Interior and Agriculture to make an informed decision regarding meeting the membership requirements of the Board and permit the Departments to contact a potential member. Nominations are to be sent to one of the addresses listed under **ADDRESSES**. To assist nominees in developing nominations packets, please visit the BLM website at <https://www.blm.gov/programs/wild-horse-and-burro/advisory-board> and click on the link, *Applying to Serve on the Advisory Board*. For more information about the Wild Horse and Burro Program, please visit the BLM website at <https://www.blm.gov/whb>.

As appropriate, certain Board members may be appointed as special government employees (SGEs). Please be aware that applicants selected to serve as SGEs will be required, prior to appointment, to file a Confidential Financial Disclosure Report in order to avoid involvement in real or apparent conflicts of interest. You may find a copy of the Confidential Financial Disclosure Report at the following website: <https://www.doi.gov/ethics/financial-disclosure>. Additionally, after appointment, members appointed as SGEs will be required to meet applicable financial disclosure and ethics training requirements. Please contact (202) 208–7960 or DOI_Ethics@sol.doi.gov with any questions about the ethics requirements for members appointed as SGEs.

Membership Selection: Individuals shall qualify to serve on the Board because of their education, training, or experience that enables them to give informed and objective advice regarding the interest they represent. They should

demonstrate experience or knowledge of the area of their expertise and a commitment to collaborate in seeking solutions to resource management issues. The Board is structured to provide fair membership and balance, both geographic and interest specific, in terms of the functions to be performed and points of view to be represented. Members are selected with the objective of providing representative counsel and advice about public land and resource planning.

Pursuant to section 7 of the Wild Free-Roaming Horses and Burros Act, members of the Board cannot be employed by the State or Federal Government.

(Authority: 43 CFR 1784.4–1)

Leah B. Baker,

Assistant Director, Resources and Planning.

[FR Doc. 2026–02648 Filed 2–9–26; 8:45 am]

BILLING CODE 4331–27–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Vehicle Parts, Components Thereof, and Vehicles Containing Same, DN 3884*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised

that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of General Motors LLC and GM Global Technology Operations LLC on February 5, 2026. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vehicle parts, components thereof, and vehicles containing same. The complaint names as respondents: AP Auto Parts Industrial Ltd. of Taiwan; ANTRC Industrial Corp. of Taiwan; Auto Power Co., Ltd. of Taiwan; Best Value Auto Body Supply of Melrose Park, IL; CCC Intelligent Solutions Holdings Inc. of Chicago, IL; CCC Intelligent Solutions Inc. of Chicago, IL; DEPO Auto Parts Ind., Co., Ltd. of Taiwan; Maxzone Vehicle Lighting Corp. of Fontana, CA; Forerunner Automotive Industrial Corp. of Taiwan; Gordon Auto Body Parts Co., Ltd. of Taiwan; Grand HC Auto Tooling Corp. of Taiwan; Jiangsu Srumto Auto Parts Co., Ltd. of China; LKQ Corporation of Antioch, TN; Keystone Automotive Industries, Inc. Antioch, TN; Mitchell International, Inc. San Diego, CA; Pro Fortune Industrial Co., Ltd. of Taiwan; Quality Collision Parts, Inc. of Warren, MI; Power Auto Parts, Inc. of Warren, MI; Tong Yang Industry Co., Ltd. of Taiwan; and Y.C.C. Parts Mfg. Co. Ltd. of Taiwan.

The complainant requests that the Commission issue a general exclusion order, limited exclusion orders, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number ("Docket No. 3884") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures¹). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document

¹ Handbook for Electronic Filing Procedures: https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.

Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at EDIS3Help@usitc.gov.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel², solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS³.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 5, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02597 Filed 2-9-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1393]

Certain Vehicle Telematics, Fleet Management, and Video-Based Safety Systems, Devices, and Components Thereof; Notice of a Commission Determination To Review in Part a Final Initial Determination and on Review, To Affirm a Finding of No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined to review in part a final initial determination ("FID") issued by the presiding administrative law judge ("ALJ") and, on review, to affirm a finding of no violation of section 337 of the Tariff Act of 1930, as amended. The investigation is terminated with a finding of no violation.

FOR FURTHER INFORMATION CONTACT: Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On March 18, 2024, the Commission instituted this investigation based on a complaint filed by Samsara, Inc. ("Samsara") of San Francisco, California. 89 FR 19356 (March 18, 2024). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vehicle telematics, fleet management, and video-based safety systems, devices, and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 11,611,621 ("the '621 patent"); 11,127,130 ("the '130 patent"); and 11,190,373 ("the '373 patent")

(collectively, the "Asserted Patents"). The Commission's notice of investigation named Motive Technologies Inc. ("Motive") of San Francisco, CA as the respondent. *Id.* The Office of Unfair Import Investigations ("OUII") was also named as a party in this investigation. *Id.*

The presiding ALJ held an evidentiary hearing on November 14, 2024, and March 18-21, 24, and 25, 2025.

On September 8, 2025, the presiding ALJ issued the FID finding that there has been no violation of section 337. Specifically, the FID finds regarding the '621 patent that: (1) Samsara has not shown that claims 1-5 are infringed; (2) Motive has shown that claims 1, 2, 4, and 5 are invalid as anticipated; (3) Motive has not shown that claims 2-4 are invalid for obviousness; and (4) Samsara has satisfied the technical prong of the domestic industry requirement. For the '130 patent, the FID finds that: (1) Samsara has not shown that claims 1 and 5 are infringed; (2) Motive has not shown that claims 1 and 5 are invalid as anticipated or obvious; (3) Motive has shown that claims 1 and 5 are patent ineligible under 35 U.S.C. 101; and (4) Samsara has failed to satisfy the technical prong of the domestic industry requirement. Regarding the '373 patent, the FID finds that: (1) Samsara has shown that claim 15 is infringed as to Motive's "Fuel Score v1" and "Fuel Score v2," but not as to Motive's "Fuel Score v3;" (2) Samsara has not shown that claim 18 is infringed; (3) Motive has not shown that claims 15 and 18 are invalid as anticipated or obvious; (4) Motive has shown that claims 15 and 18 are patent ineligible under 35 U.S.C. 101; and (5) Samsara has not satisfied the technical prong of the domestic industry requirement. The FID also finds that Samsara has failed to satisfy the economic prong of the domestic industry requirement for any of the Asserted Patents.

The FID includes a Recommended Determination on Remedy and Bonding ("RD"). The RD recommends that if the Commission finds a violation, it should issue a limited exclusion order and a cease and desist order against Motive, and that the Commission should impose a one hundred percent (100%) bond during the period of Presidential review.

On September 22, 2025, Samsara filed a petition for review of the FID, requesting review of the findings that: (1) Samsara has not shown that the accused products infringe claims 1-5 of the '621 patent; (2) Motive has shown that claims 1, 2, 4, and 5 of the '621 patent are invalid under 35 U.S.C. 102; (3) Samsara has not shown that the

² All contract personnel will sign appropriate nondisclosure agreements.

³ Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

accused products infringe claims 1 and 5 of the '130 patent; (4) Samsara has not satisfied the technical prong of the domestic industry requirement for the '130 patent; (5) Motive has shown that claims 1 and 5 of the '130 patent are invalid as patent ineligible under 35 U.S.C. 101; (6) Samsara has not shown that Motive's "Fuel Score v3" infringes claim 15 of the '373 patent; (7) Samsara has not shown that the accused products infringe claim 18 of the '373 patent; (8) Motive has shown that claims 15 and 18 of the '373 patent are invalid as patent ineligible under 35 U.S.C. 101; (9) Samsara has not satisfied the technical prong of the domestic industry requirement for the '373 patent; and (10) Samsara has not satisfied the economic prong of the domestic industry requirement for any of the Asserted Patents.

Also on September 22, 2025, Motive filed a contingent petition requesting review of the FID's findings that: (1) the accused products and asserted domestic industry products satisfy certain limitations of the '130 patent; (2) claims 1 and 5 of the '130 patent are not invalid under 35 U.S.C. 103 as obvious over certain prior art; and (3) the accused products satisfy certain limitations of the '373 patent. On the same day, OUII also filed a contingent petition requesting review of the FID's findings that the accused products satisfy certain limitations of the '130 patent and the '373 patent.

On November 19, 2025, Motive filed a combined response to Samsara's and OUII's petitions for review. On the same day, Samsara filed a response to Motive's contingent petition for review. On November 21, 2025, OUII filed a combined response to Samsara's and Motive's petitions.

Having reviewed the record of the investigation, including the FID, the parties' petitions for review, and related submissions, the Commission has determined to review the FID in part. Specifically, the Commission has determined to review the FID's findings that: (1) Motive has shown that claims 1 and 5 of the '130 patent are patent ineligible under 35 U.S.C. 101; (2) Samsara has not satisfied the technical prong of the domestic industry requirement for the '373 patent; and (3) Samsara has failed to satisfy the economic prong of the domestic industry requirement for any of the Asserted Patents. On review, the Commission has determined to take no position on the issues under review. The Commission declines review of the remaining issues in the FID and has determined that there has been no violation of section 337.

The Commission vote for this determination took place on February 5, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 5, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02577 Filed 2-9-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-510 and 731-TA-1245 (Second Review)]

Calcium Hypochlorite From China; Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the countervailing and antidumping duty orders on calcium hypochlorite from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on June 2, 2025 (90 FR 23361) and determined on September 5, 2025 that it would conduct expedited reviews (90 FR 57098, December 9, 2025).²

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on February 6, 2026. The views of the Commission are contained in USITC Publication 5701 (February 2026), entitled *Calcium Hypochlorite from China: Investigation Nos. 701-TA-510 and 731-TA-1245 (Second Review)*.

By order of the Commission.

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission tolled its schedule for this proceeding.

Issued: February 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-02645 Filed 2-9-26; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB# 1110-0078]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision and Renewal of a Previously Approved Collection; Voice of Customer Survey

AGENCY: Federal Bureau of Investigation, Office of Private Sector, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Office of Private Sector will be submitting the following information collection request renewal 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 13, 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 Christopher Johnston, Supervisory Special Agent, Federal Bureau of Investigation, Office of Private Sector, 935 Pennsylvania Ave. NW, Washington, DC 20535, cbjohnston@fbi.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:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Private Sector, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- 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.

Abstract: This survey is intended to measure the effectiveness of the FBI's Office of Private Sector's engagement efforts with the Private Sector.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and renewal of a previously approved collection.

2. *The Title of the Form/Collection:* Voice of Customer Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Office of Private Sector.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Private Sector-for or not for profit institutions, Federal Government. The obligation to respond is: voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: The estimated number of respondents for this survey is 900. The time per response is 10 minutes to complete the survey.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 150 hours ($900 \times 10\text{min}/60 = 150$).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* There is no estimated cost burden in United States Dollars for this collection.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency (annually)	Total annual responses	Time per response (min)	Total annual burden (hours)
Survey (Private Sector-for or nonprofit institutions, Federal Government)	900	1	900	10	150

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 6, 2026.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2026-02618 Filed 2-9-26; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Job Corps Enrollee Allotment Determination

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled, "Job Corps Enrollee Allotment Determination." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with

the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by April 13, 2026.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting JobCorps-DPCP@dol.gov.

Submit written comments about, or requests for a copy of this ICR by mail or courier to the U.S. Department of Labor, Employment and Training, Office of Job Corps, 200 Constitution Avenue NW, N-4459, Washington, DC 20210; or by email: JobCorps-DPCP@dol.gov.

FOR FURTHER INFORMATION CONTACT: Ronetia Bacon at JobCorps-DPCP@dol.gov.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly

understood, and the impact of collection requirements can be properly assessed.

WIOA authorizes the collection of information from Job Corps applicants to determine eligibility for the Job Corps program. 29 U.S.C. 3194-3195.

Applicant and student data is maintained in accordance with the Department's Privacy Act System of Records Notice DOL/GOVT-2 Job Corps Student Records authorizes this information collection. Applicant and student data are maintained in accordance with the Department of Labor's (Department) Privacy Act System of Records Notice (SORN) DOL/GOVT-2 Job Corps Student Records. The estimated number of respondents has been adjusted to reflect current enrollment levels. While the required on-board strength remains unchanged, the program has not fully regained its typical enrollment following the pandemic, and a temporary pause on background checks further delayed new enrollments. These factors combined to limit the number of participants eligible for the allotment, resulting in fewer respondents for this collection.

In accordance with 5 CFR 1320, the Department is seeking approval for data collection to obtain necessary information from Job Corps students with dependents if they wish to make an allocation for their beneficiary. The ETA 658—Allotment Request Data Entry Screen is the form used in this collection and is used by students to request allotments for dependent

children in accordance with Job Corps regulations and policies. There have been no revisions to this data collection form.

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 it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0030.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Job Corps Enrollee Allotment Determination.

Form: ETA 658 Allotment Request Data Entry Screen.

OMB Control Number: 1205–0030.

Affected Public: Individual.

Estimated Number of Respondents: 750.

Frequency: 1/person.

Total Estimated Annual Responses: 750.

Estimated Average Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 37.5.

Total Estimated Annual Other Cost Burden: \$0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Henry Maklakiewicz,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026–02644 Filed 2–9–26; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Revision of Information Collection; Contingent Work Supplement to the Current Population Survey

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the “Contingent Work Supplement (CWS) to the Current Population Survey (CPS).” A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 13, 2026.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, by email to BLS_PRA_Public@bls.gov.

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this request for review is for the Bureau of Labor Statistics (BLS) to obtain clearance for a revision to the Contingent Work Supplement (CWS) to the Current Population Survey (CPS), which was last conducted in May 2025. The CWS questions focus on people with contingent jobs—those that people do not expect to last or that are temporary—and workers in alternative employment arrangements, such as independent contractors, on-call workers, temporary help agency workers, and workers provided by contract firms. There are also questions to identify digital labor platform workers, those who obtain work or pick tasks by using a digital labor platform mobile application (app) or website to directly connect them with customers or clients and arrange payment for the tasks.

Because this supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the supplement. Comparisons will be possible across characteristics such as sex, race and ethnicity, age, and educational attainment of the respondent.

The CWS will provide information on the number and characteristics of workers in contingent jobs and alternative employment arrangements and those using digital labor platforms. The CWS was fielded periodically 5 times from 1995 to 2005 and then in May 2017, July 2023, and May 2025. There is interest in more regular collection of these data to show how the number and characteristics of these workers are changing over time. July 2026 CWS data will allow researchers and policy makers to evaluate how the number and characteristics of these workers have evolved. Policy makers also can use these data to inform the design of regulations for different types of workers.

BLS is proposing changes to the digital labor platform work portion of the July 2026 supplement. Separate sections that asked about platform work on an employed person's main job (17 questions) and the second job of multiple jobholders (15 questions) will be streamlined into a single platform work section (24 questions, about half of which are new). The revised platform work section will include new items about work over the prior 4 weeks. The

expanded time reference for this portion of the supplement, and inclusion of people not employed at the time of the survey, will provide more information about digital platform work that might be of short duration or intermittent. The new questions include how many days per week and hours per day were typically spent on work obtained through an app or website and what type of work was done.

II. Current Action

Office of Management and Budget clearance is being sought for the Contingent Work Supplement to the CPS.

A revision of the existing collection is needed to incorporate updates to the digital labor platform work portion of the July 2026 supplement and provide the Nation with timely information about contingent and alternative work arrangements.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Title of Collection: Contingent Work Supplement (CWS) to the Current Population Survey (CPS).

OMB Number: 1220–0153.

Type of Review: Revision.

Affected Public: Households.

Annual Number of Respondents: 48,000.

Frequency: Once.

Total Annual Responses: 48,000.

Average Time per Response: 3 minutes.

Estimated Annual Total Burden Hours: 2,400 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of

Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed on February 6, 2026.

Eric Molina,

*Chief, Division of Management Systems,
Branch of Policy Analysis.*

[FR Doc. 2026–02629 Filed 2–9–26; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0045]

Aerial Lifts Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Aerial Lifts Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by April 13, 2026.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2009–0045) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about

submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Belinda Cannon, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements The purpose of these requirements are to ensure that employers who modify an aerial lift for a use not intended by the lift manufacturer (field modified aerial lift) will obtain from that manufacturer, or an equivalent entity (such as a nationally-recognized laboratory), a written certificate stating that: the modification conforms to the applicable provisions of ANSI A92.2–1969 and OSHA's Aerial Lifts Standard; and the modified aerial lift is at least as safe as it was before modification. Doing so reduces the likelihood of worker's

serious bodily injury or death during the operation of field modified aerial lifts.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Aerial Lifts Standard. The agency is seeking to retain its previous approved burden of one (1) hour. There are no program changes or adjustments associated with the information collection requirement in the standard.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Aerial Lifts Standard (29 CFR 1926.453).

OMB Control Number: 1218-0216.

Affected Public: Business or other for-profits.

Number of Respondents: 10.

Number of Responses: 10.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648. All comments, attachments, and other

material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA-2009-0045). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link.

Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Signed at Washington, DC, on January 30, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026-02546 Filed 2-9-26; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2009-0043]

Access to Employee Exposure and Medical Records; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to

extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Access to Employee Exposure and Medical Records Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by April 13, 2026.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY) (877) 889-5627 for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA-2009-0043) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Belinda Cannon, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the

desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

Under the authority granted by the OSH Act, OSHA published a health regulation governing access to employee exposure monitoring data and medical records. This regulation does not require employers to collect any information or to establish any new systems of records. Rather, it requires that employers provide workers, their designated representatives, and OSHA with access to employee exposure monitoring and medical records, and any analyses resulting from these records that employers must maintain under OSHA's toxic chemical and harmful physical agent standards. In this regard, the regulation specifies requirements for record access, record retention, worker information, trade secret management, and record transfer. Accordingly, the agency attributes the burden hours and costs associated with exposure monitoring and measurement, medical surveillance, and the other activities required to generate the data governed by the regulation to the standards that specify these activities; therefore, OSHA did not include these burden hours and costs in this ICR.

Access to exposure and medical information enables employees and their designated representatives to become directly involved in identifying and controlling occupational health hazards, as well as managing and preventing occupationally-related health impairment and disease. Providing the agency with access to the records permits the agency to ascertain whether or not employers are complying with the regulation, as well as with the recordkeeping requirements of OSHA's other health standards; therefore, OSHA access provides additional assurance that workers and their designated representatives are able to obtain the data they need to conduct their analyses.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Access of Employee Exposure and Medical Records. The agency is seeking an adjustment decrease in burden going from 816,012 to 794,705 hours, a total difference of 21,307 hours. This adjustment decrease is due to a reduction in the number of new workers and seasonal workers being notified.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

OMB Control Number: 1218-0065.

Affected Public: Business or other for-profits.

Number of Respondents: 806,986.

Frequency: Initially; Annually; On occasion.

Average Time per Response: Various.

Estimated Number of Responses: 7,034,798.

Estimated Total Burden Hours: 794,705.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments,

including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693-1648. All comments, attachments, and other material must identify the agency's name and the OSHA docket number for the ICR (Docket No. OSHA-2009-0043). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link.

Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

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

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026-02628 Filed 2-9-26; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0041]

FM Approvals LLC: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of FM Approvals LLC for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application. Additionally, OSHA proposes to add one test standard to the NRTL Program's list of appropriate test standards.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 25, 2026.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2007-0043). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Submission of comments: You may submit comments and attachments, identified by Docket No. OSHA-2007-0041, electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions. The Federal e-Rulemaking Portal at www.regulations.gov is the only way to submit comments on this Notice.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before February 25, 2026 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone: (202) 693-1999 or email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor by phone: (202) 693-1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:**I. Notice of the Application for Expansion**

OSHA is providing notice that FM Approvals LLC (FM) is applying for an expansion of current recognition as a NRTL. FM requests the addition of one test standard to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal**

Register in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including FM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <https://www.osha.gov/nationally-recognized-testing-laboratory-program>.

II. General Background on the Application

FM submitted an application to OSHA to expand recognition as a NRTL on June 13, 2024 (OSHA-2007-0041-0027), to include six test standards (application was signed May 20, 2024). The application was amended on May 27, 2025 (OSHA-2007-0041-0026), to remove five standards from the original submission. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA performed an on-site review in relation to this application on December 3-5, 2024.

Table 1 below, lists the appropriate test standard found in FM's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN FM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
* FM 1035	Nitrogen Generators.

* Represents the standard that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add One New Test Standard to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents a product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of

new test standards by: (1) monitoring notifications issued by certain Standards Development Organizations; (2) reviewing applications by NRTLs or applicants seeking recognition to include new test standards in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add one new test standard to the NRTL Program's list of appropriate test standards. Table 2, below, lists the test standard that is new to the NRTL Program. OSHA has preliminarily determined that this test standard is appropriate and proposes to include it in the NRTL Program's list of appropriate test standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—STANDARD OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
FM 1035	Nitrogen Generators.

IV. Preliminary Findings on the Application

FM submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that FM can meet the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of this test standard for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of FM's application.

V. Public Participation

OSHA welcomes public comment as to whether FM meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a

request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2007-0041 (for further information, see the "Docket" heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant FM's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

VI. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7-2025 (90 FR 27878, June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on February 4, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026-02541 Filed 2-9-26; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0042]

TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV Rheinland of North America, Inc. for

expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 25, 2026.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2007-0042). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Submission of comments: You may submit comments and attachments, identified by Docket No. OSHA-2007-0042, electronically at www.regulations.gov, which is the Federal eRulemaking Portal. Follow the online instructions for making electronic submissions. The Federal eRulemaking Portal at www.regulations.gov is the only way to submit comments on this Notice.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before February 25, 2026 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and

Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693-1999 or email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693-1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for expansion of the current recognition as a NRTL. TUVRNA requests the addition of one test standard to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the

NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

II. General Background on the Application

TUVRNA submitted an application to OSHA for expansion of the NRTL scope of recognition on May 7, 2024 (OSHA-2007-0042-0090), requesting the addition of one standard to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform an on-site review in response to this application. OSHA staff has preliminarily determined that OSHA should grant the application for test standard expansion.

Table 1, below, lists the appropriate test standard found in TUVRNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARD FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 3100 ...	Automated Mobile Platforms.

III. Preliminary Findings on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that TUVRNA has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the one test standard for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the

request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2007-0042 (for further information, see the "Docket" heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7-2025 (90 FR 27878, June 30, 2025), and 29 CFR 1910.7.

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

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026-02565 Filed 2-9-26; 8:45 am]

BILLING CODE 4510-26-P

NUCLEAR REGULATORY COMMISSION

[NRC-2024-0204]

Information Collection: Invoice Submissions by Contractors for NRC Contracts/Orders

AGENCY: The U.S. Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "Invoice Submissions by Contractors for NRC Contracts/Orders."

DATES: Submit comments by March 12, 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: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://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: Heather Dempsey, Acting NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0856; email: Infocollects.Resource@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2024-0204 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-2024-0204.
- **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. A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML19050A504. The final supporting

statement is available in ADAMS under Accession No. ML26023A042.

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

- **NRC's Clearance Officer:** A copy of the collection of information and related instructions may be obtained without charge by contacting the Acting NRC Clearance Officer, Heather Dempsey, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0856; email: Infocollects.Resource@nrc.gov.

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://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.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "Invoice Submissions by Contractors for NRC Contracts/Orders." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and

that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on November 20, 2025, 90 FR 52451.

1. *The title of the information collection:* Invoice Submissions by Contractors for NRC Contracts/Orders.
2. *OMB approval number:* 3150-0109.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* Not Applicable.
5. *How often the collection is required or requested:* On Occassion.
6. *Who will be required or asked to respond:* Contractors.
7. *The estimated number of annual responses:* 717.
8. *The estimated number of annual respondents:* 79.
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 717.
10. *Abstract:* The Division of Acquisition Management in the Office of Administration at the NRC, provides contractors with an invoice template and instructions on how to properly prepare invoices for all cost reimbursement contracts/task orders so that they are complete and accurate. Submissions can be provided via the Invoicing Processing Platform.

Dated: February 5, 2026.

For the Nuclear Regulatory Commission.

Heather Dempsey,

NRC Acting Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2026-02542 Filed 2-9-26; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2025-0001]

Sunshine Act Meetings

Correction

On Friday, February 6, 2026, a notice document appearing on pages 5509–5510 of the **Federal Register** was a previously-published Nuclear Regulatory Commission document listed under the Bureau of Land Management in the table of contents. The notice was published due to a technical issue and is hereby withdrawn.

[FR Doc. C1-2026-02421 Filed 2-9-26; 8:45 am]

BILLING CODE 0099-10-P

POSTAL REGULATORY COMMISSION**[Docket Nos. MC2026–163 and K2026–163]****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 13, 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). 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):* MC2026–163 and K2026–163; *Filing Title:* USPS Request to Add Priority Mail Contract 953 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 5, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* February 13, 2026.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Parvaneh Higareda,

Alternate Federal Register Liaison.

[FR Doc. 2026–02592 Filed 2–9–26; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–104769; File No. SR–NYSEARCA–2026–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees

February 5, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that on January 30, 2026, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges (the “Fee Schedule”) to adopt annual fees for Class ETF Shares listed under recently adopted Rule 5.2–E(j)(9). The Exchange proposes to implement the rule change on February 2, 2026. The proposed rule change is available on the Exchange's website at www.nyse.com, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding to adopt annual fees for Class ETF Shares listed under recently adopted Rule 5.2–E(j)(9).

As described below, the Exchange does not propose different pricing for Class ETF Shares. Rather, the Exchange proposes to incorporate Class ETF Shares into the existing listing and annual fees charged by the Exchange for Exchange Traded Products (“ETPs”).³

The proposed changes are designed to incentivize issuers to list new Class ETF Shares, transfer existing products to the Exchange, and maintain listings on the Exchange, which the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors.

The Exchange proposes to implement the fee changes effective February 2, 2026.

Proposed Rule Change

Annual fees for ETPs are based on the number of shares outstanding per issuer.⁴ Currently, as set forth in section 6.a. of the Fee Schedule, the Exchange charges the following annual fees for ETPs (excluding Managed Fund Shares, Active Proxy Portfolio Shares, Managed Trust Securities, and Managed Portfolio Shares) and Exchange-Traded Fund Shares listed under Rule 5.2–E(j)(8) that track an index, have a maturity date, or provide an expected return over a specific outcome period:

Number of shares outstanding (each issue)	Annual fee
Less than 25 million	\$8,500
25 million up to 99,999,999	15,000
100 million up to 249,999,999	25,000
250 million and over	30,000

Section 6.b. sets forth the following annual fees for Managed Fund Shares, Managed Trust Securities, Active Proxy

Portfolio Shares, Managed Portfolio Shares, and Exchange-Traded Fund Shares listed under Rule 5.2–E(j)(8) that do not track an index:

Number of shares outstanding (each issue)	Annual fee
Less than 25 million	\$10,000
25 million up to 99,999,999	15,000
100 million up to 249,999,999	25,000
250 million and over	30,000

The Exchange proposes to charge annual fees for Class ETF Shares. Since Class ETF Share can be actively managed or non-actively managed (*i.e.*, track an index), the Exchange believes that it would be appropriate to amend both section 6.a. and section 6.b. to add Class ETF Shares. The relatively lower annual fees charged for ETPs that are not Managed Fund Shares and Managed Trust Securities better correlate with the ongoing Exchange costs associated with listing and trading Fund Shares that are non-actively managed, including costs related to issuer services, listing administration, product development and regulatory oversight. For similar reasons, the Exchange believes that charging Class ETF Shares that are actively managed the current annual fees applicable to Managed Fund Shares and Managed Trust Securities would be appropriate because those annual fees better correlate with higher Exchange costs associated with similar actively managed products such as Managed Fund Shares and Managed Trust Securities, including costs related to issuer services, listing administration, product development and regulatory oversight.

Finally, as noted above, the Exchange proposes to add Class ETF Shares to current footnote 3 which defines the term “Exchange Traded Products” for purposes of the Fee Schedule.

Each of the proposed changes described above are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁶ in particular, because it provides for the equitable

allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market for the listing of ETPs. Specifically, ETP issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”⁷

The Exchange believes that the ongoing competition among the exchanges with respect to new listings and the transfer of existing listings among competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

Given this competitive environment, the proposal represents a reasonable attempt to establish pricing for ETPs listed under recently adopted Rule 5.2–E(j)(9).

Annual fees for ETPs are based on the number of shares outstanding per issuer, and then are further differentiated based on whether the ETP is actively or non-actively managed, whether the ETP is index based or not, with higher annual fees for ETPs that are actively managed or not based on an index. The Exchange believes that it is reasonable to charge annual fees for Class ETF Shares based on that same differentiations. The Exchange believes that charging Class ETF Shares that are non-actively managed the same annual fees the Exchange currently charges other ETPs that are not Managed Fund Shares and Managed Trust Securities would be reasonable because those relatively

³ “Exchange Traded Products” is defined in footnote 3 of the current Schedule of Fees and Charges. The Exchange proposes to modify the definition to include Fund Class ETF Shares.

⁴ Annual fees are assessed each January in the first full calendar year following the year of listing. The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the Fund issuer or Fund “family” in its most recent periodic filing with the Commission or other publicly available information. Annual fees apply regardless of whether any of these Funds are listed elsewhere.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

⁷ See Regulation NMS, 70 FR at 37499.

lower annual fees better correlate with the ongoing Exchange costs associated with listing and trading an ETP that is non-actively managed or tracks an index, including costs related to issuer services, listing administration and product development. Further, the Exchange believes that charging Class ETF Shares that are actively managed or do not track an index the current annual fees applicable to Managed Fund Shares and Managed Trust Securities, which are also actively managed products, would be reasonable because those annual fees better correlate with the higher Exchange costs for listing and trading active Class ETF Shares, including costs related to issuer services, listing administration, product development and regulatory oversight.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal equitably allocates its fees among its market participants. In the prevailing competitive environment, issuers can readily favor competing venues or transfer listings if they deem fee levels at a particular venue to be excessive, or discount opportunities available at other venues to be more favorable.

The proposed listing and annual fees for Class ETF Shares are equitable because the proposed increased annual fees would apply uniformly to all issuers. Moreover, the proposed fees would be equitably allocated among issuers because issuers would continue to qualify for the listed fee based on issuing ETPs that are Class ETF Shares and for the annual fee based on the number of shares outstanding and under criteria applied uniformly to all such issuers.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposed annual fees would be applicable to all existing and potential issuers of Class ETF Shares uniformly and in equal measure.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, issuers are free to list elsewhere if they believe that alternative venues offer them better value.

The Exchange believes it is not unfairly discriminatory to apply the same fees applicable to ETPs with the exception of Managed Fund Shares and Managed Trust Securities to Fund Shares that are non-actively managed, and to apply the same fees applicable to Managed Fund Shares and Managed

Trust Securities to Class ETF Shares that are non-actively managed or do not track an index, because the proposed fees would be offered on an equal basis to all issuers listing Class ETF Shares on the Exchange. Moreover, the proposed annual fees for Class ETF Shares would apply to issuers in the same manner as the current annual fees for ETPs and Managed Fund Shares and Managed Trust Securities.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁸ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage competition because it would establish listing and annual fees for Class ETF Shares, thereby encouraging issuers to develop and list additional products on the Exchange that the Exchange believes will enhance competition both among issuers and listing venues, to the benefit of investors. The proposal also ensures that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed issuers. The market for listing services is extremely competitive. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing exchange. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition. The proposed changes are designed to attract additional listings to the Exchange by establishing listing and annual fees for an ETPs listed under a new rule. The Exchange believes that the proposed changes would continue to incentivize issuers to develop and list new products, transfer existing products to the Exchange, and maintain listings on the Exchange. The proposed fees and discounts would be available to all issuers, and, as such, the proposed change would not impose a disparate

burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive listings market in which issuers can readily choose alternative listing venues. In such an environment, the Exchange must adjust its fees and discounts to remain competitive with other exchanges competing for the same listings. Because competitors are free to modify their own fees and discounts in response, and because issuers may readily adjust their listing decisions and practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for Class ETF Shares to reflect the revenue and expenses associated with listing on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,⁹ and Rule 19b-4(f)(2) thereunder¹⁰ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78f(b)(8).

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2026-10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2026-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2026-10 and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02580 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104771; File No. SR-NYSEARCA-2026-03]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE National Schedule of Fees and Rebates

February 5, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2026, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with

the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE National Schedule of Fees and Rebates ("Fee Schedule") to conform with a recent amendment to Rule 610 of Regulation NMS recently approved by the Securities and Exchange Commission ("SEC" or the "Commission").³ The proposed rule change is available on the Exchange's website at www.nyse.com, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to conform with a recent amendment to Rule 610 of Regulation NMS ("Reg NMS") recently approved by the Commission. The Exchange proposes to implement the fee change effective February 2, 2026.

In 2022, the Commission proposed to amend certain rules under Reg NMS after taking into account the availability of "[n]ew data processing and communications techniques [that] create the opportunity for more efficient and effective market operations"⁴ and that is in the public interest, appropriate for investor protection and the maintenance of fair and orderly markets to assure

"economically efficient execution of securities transactions," "fair competition among brokers and dealers, among exchange markets," and "the practicality of brokers executing investors' orders in the best market."⁵ These changes included an amendment to Rule 610 of Reg NMS that prohibits a national securities exchange from imposing, or permitting to be imposed, any fee, or providing, or permitting to be provided, any rebate or other remuneration for the execution of an order in an NMS stock unless such fee, rebate, or other remuneration can be determined at the time of execution.⁶ As amended, Rule 610 of Reg NMS provides that any national securities exchange that imposes a fee or provides a rebate that is based on a certain volume threshold, or establishes tier requirements or tiered rates based on minimum volume thresholds, would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate.

These amendments to Rule 610 of Reg NMS were to become effective on November 3, 2025, the first business day of November 2025. On October 31, 2025, the Commission provided temporary exemptive relief to the exchanges to adjust their fee schedules to comply with the requirements of Rule 610 that exchange fees be determinable at the time of execution until the first business day of February 2026.⁷

To conform to Rule 610 of Reg NMS, the Exchange proposes to amend its Fee Schedule to add a new bullet point to the list of bullet points at the top of the Fee Schedule to provide:

- All transaction tier calculations to determine the fee/rebate an ETP Holder will incur/earn for the billing month are based on the ETP Holder's trading activity in the prior month, unless otherwise specified.

As noted above, the changes proposed herein are intended to conform to Rule 610 of Reg NMS to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution. The Exchange does not propose any other changes to the Fee Schedule.

⁵ 15 U.S.C. 78k-1(a)(1)(c)(i), (ii), and (iv).

⁶ See Release No. 101070, 89 FR at 81680.

⁷ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended). The lapse in appropriations began on October 1, 2025, and ended on November 12, 2025.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101070 (September 18, 2024), 89 FR 81620 (October 8, 2024) (S7-30-22).

⁴ 15 U.S.C. 78k-1(a)(1)(B).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As described above, the proposed amendments to the Exchange's Price List are being made to conform with recent amendments to Rule 610 of Reg NMS that all exchange fees and rebates to be determinable at the time of execution. The changes proposed herein are thus designed to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution as required by the Act. The proposed rule change would provide clarity to market participants, including investors, to determine what fee or rebate level would be applicable to any submitted order at the time of execution and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that the Exchange's Fee Schedule properly reflect the requirements of Rule 610 of Reg NMS. The Exchange also believes that the proposed rule change would remove impediments to and perfects the mechanism of a free and open market by ensuring that market participants and the investing public can more easily navigate and understand the Exchange's Fee Schedule. The proposed rule change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion. Finally, by providing greater determinism to the Exchange's Price List consistent with Rule 610(d) of Reg NMS, the Exchange believes that the proposed fee change is therefore reasonable. Moreover, since the proposed changes would apply equally to all member organizations on an equal and non-discriminatory basis, the Exchange further believes that the proposal equitably allocates fees and credits among market participants and is not unfairly discriminatory.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does not impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change to amend the Exchange's Fee Schedule to conform to a recent amendment to Rule 610 of Reg NMS is not intended to address competitive issues but rather is concerned solely with ensuring that the Exchange's Fee Schedule properly reflects the requirements of Rule 610 of Reg NMS that is to be implemented in February 2026.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁰ and Rule 19b-4(f)(2) thereunder¹¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSENAT-2026-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSENAT-2026-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSENAT-2026-03 and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02582 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104772; File No. SR-NYSE-2026-03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

February 5, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder,³ notice is hereby given that on January 28, 2026, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4.

the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the note to the virtual routing and forwarding and virtual control circuit service in the Connectivity Fee Schedule (“Fee Schedule”). The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the note to the virtual routing and forwarding (“VRF”) and virtual control circuit (“VCC”) service in the Fee Schedule.

Currently, the Fee Schedule includes VCC services between the Mahwah, New Jersey data center (“MDC”) ⁴ and the NYSE, NYSE American LLC, and NYSE Arca, Inc. trading floors (“Trading Floors”) ⁵ (each, a “TF VCC”), as well as

⁴ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs (as defined below) are indirect subsidiaries of ICE.

⁵ “Trading Floor” is used as defined in, as applicable, NYSE Rule 6A (Trading Floor), NYSE American Scope of Terms (17), and NYSE Arca Rule 1 (Definitions), Floor, Trading Floor and Options Trading Floor. NYSE National, Inc. and NYSE Texas, Inc. do not have trading floors. See Securities Exchange Act Release No. 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR–NYSE–2025–12, SR–NYSEAMER–2025–21, SR–

between two Users ⁶ in the MDC or a between a User inside the MDC and another party or the same User outside of the MDC at a remote access center.⁷ The Fee Schedule also includes VRF services between the MDC and the Trading Floors.⁸

A User that has two TF VCCs is subject to fees for two VCCs. However, in some cases only one of a User’s two TF VCCs would be able to be active at a given time. More specifically, a User could have two TF VCCs that connect the MDC and the User’s or third party’s equipment on a Trading Floor. Two networks operate on each Trading Floor. To ensure resiliency, a User may choose to connect through two different Trading Floor networks. If the two TF VCCs are connected to different Trading Floor networks, only one such network is active at a given time. As a result, the User would not be able to use both TF VCCs at the same time. A User may nonetheless have such a set-up because it is more resilient than either having just one TF VCC or having two TF VCCs that connect to the same Trading Floor network.

The Exchange wants to encourage the use of two TF VCCs that connect through two different Trading Floor networks (each, a “Resilient TF VCC”), as it is a more resilient set-up than if they are through the same network. Accordingly, the Exchange proposes to charge for the two Resilient TF VCCs as if they were one TF VCC.

To make the change, the Exchange proposes to amend the footnote to the VCC description in the Fee Schedule as follows (additions italicized):

* A virtual control circuit (“VCC”) is between the Mahwah data center and a single end point, including a Trading

NYSEARCA–2025–29, SR–NYSETEX–2025–03, and SR–NYSENAT–2025–07).

⁶ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc. and NYSE Texas, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR–NYSEAMER–2026–07, SR–NYSEARCA–2026–06, SR–NYSENAT–2026–02, and SR–NYSETEX–2026–01.

⁷ See Securities Exchange Act Release Nos. 101582 (November 12, 2024), 89 FR 90812 (November 18, 2024) (SR–NYSE–2024–69), and 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR–NYSE–2025–12, SR–NYSEAMER–2025–21, SR–NYSEARCA–2025–29, SR–NYSETEX–2025–03, and SR–NYSENAT–2025–07).

⁸ *Id.*

Floor, while a virtual routing and forwarding service (“VRF”) can be between the Mahwah data center and one or more Trading Floors. If the User chooses VCCs or a combination of a VCC and a VRF for connectivity to several Trading Floors, it will be charged separately for each connection, *provided that two VCCs from the Mahwah data center to the same Trading Floor will be subject to one VCC charge so long as only one VCC is able to be active at a given time.* If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

The proposed language includes the modifying phrase “so long as only one VCC is able to be active at a given time” to clarify that if a User has two TF VCCs that use the same network, the User will be subject to two charges, since the TF VCCs may be active at the same time.

General

Currently, no User has a Resilient TF VCC, and so no User would benefit from the change.

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS expects that the proposed rule change will not result in any new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable because it is designed to foster the resilience of TF VCCs. Currently, there are no Users with Resilient TF VCCs, and the Exchange believes that charging for two Resilient TF VCCs as if they were one TF VCC may motivate Users to have Resilient TF VCCs. Moreover, as only one Resilient TF VCC can be in use at any one time, no User will benefit from having two Resilient TF VCCs in use while only paying for one.

The Exchange believes that it is reasonable and equitable to amend the note to the Fee Schedule to clarify that, provided that the User has two TF VCCs from the MDC to the same Trading Floor, the User will be subject to one TF VCC charge so long as only one TV VCC is able to be active at a given time. By so amending the note, the Exchange would make it easier for potential purchasers of the service to assess what connectivity will best serve them. The Exchange believes that it is reasonable and equitable that, if a User has two TF VCCs that are active at the same time, for example by using the same Trading Floor network, the User will continue to be subject to two charges.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Currently, 17 telecommunications service providers ("Telecoms")¹² operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹³ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange

encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁴ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally. All Users that have two Resilient TF VCCs, *i.e.* that connect to the same TF and use different networks and so are not able to be active at the same time, would be charged as if they had one TF VCC. All Users that have two TF VCCs that are not resilient, for example that use the same Trading Floor network, will continue to be subject to two charges.

There is no limit on the number of Resilient TF VCCs a User may obtain. Accordingly, a User could have two Resilient TF VCCs to each Trading Floor, or a number of Resilient TF VCCs to one Trading Floor.

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of

market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁵

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange. Rather, it would encourage Users to have resilient VCCs between the MDC and the Trading Floors. The Exchange believes that amending the note to the Fee Schedule would make it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁶ and Rule 19b-4(f)(2) thereunder¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

¹¹ 15 U.S.C. 78f(b)(4).

¹² Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹³ See Securities Exchange Act Release No. 97998 (July 26, 2023), 88 FR 50238 (August 1, 2023) (SR-NYSE-2023-27).

¹⁴ See *id.* at 50241. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4.

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2026-03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2026-03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2026-03 and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02583 Filed 2-9-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104768; File No. SR-CBOE-2025-090]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Permit Orders for the Accounts of Market-Makers With an Appointment in the Applicable Class To Be Solicited as the Contra-Side Order Submitted Into Certain Exchange Auctions

On December 9, 2025, Cboe Exchange, Inc. filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rules 5.37, 5.39, 5.73, and 5.74 to permit orders for the accounts of Market-Makers with an appointment in the applicable class to be solicited for the contra-side order submitted for execution against an agency order into a simple Automated Improvement Mechanism ("AIM"), simple Solicitation Auction Mechanism ("SAM"), FLEX AIM, or FLEX SAM auction. The proposed rule change was published for comment in the **Federal Register** on December 22, 2025.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is February 5, 2026. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant

to Section 19(b)(2) of the Act,⁵ designates March 22, 2026, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CBOE-2025-090).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104774; File No. SR-NYSEAMER-2026-07]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

February 5, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 28, 2026, NYSE American LLC ("NYSE American" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the note to the virtual routing and forwarding and virtual control circuit service in the Connectivity Fee Schedule ("Fee Schedule"). The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 104437 (Dec. 17, 2025), 90 FR 59906. The Commission has received no comment letters on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁸ 17 CFR 200.30-3(a)(12).

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the note to the virtual routing and forwarding ("VRF") and virtual control circuit ("VCC") service in the Fee Schedule.

Currently, the Fee Schedule includes VCC services between the Mahwah, New Jersey data center ("MDC")⁴ and the New York Stock Exchange LLC, NYSE American, and NYSE Arca, Inc. trading floors ("Trading Floors")⁵ (each, a "TF VCC"), as well as between two Users⁶ in the MDC or a between a User inside the MDC and another party or the same User outside of the MDC at a remote access center.⁷ The Fee Schedule also includes VRF services between the MDC and the Trading Floors.⁸

⁴ Through its Fixed Income and Data Services ("FIDS") business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange and the Affiliate SROs (as defined below) are indirect subsidiaries of ICE.

⁵ "Trading Floor" is used as defined in, as applicable, NYSE Rule 6A (Trading Floor), NYSE American Scope of Terms (17), and NYSE Arca Rule 1 (Definitions), Floor, Trading Floor and Options Trading Floor. NYSE National, Inc. and NYSE Texas, Inc. do not have trading floors. See Securities Exchange Act Release No. 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR-NYSE-2025-12, SR-NYSEAMER-2025-21, SR-NYSEARCA-2025-29, SR-NYSETEX-2025-03, and SR-NYSENAT-2025-07).

⁶ For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR-NYSEMKT-2015-67). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc. and NYSE Texas, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR-NYSE-2026-03, SR-NYSEARCA-2026-06, SR-NYSENAT-2026-02, and SR-NYSETEX-2026-01.

⁷ See Securities Exchange Act Release Nos. 101575 (November 12, 2024), 89 FR 90770 (November 18, 2024) (SR-NYSEAMER-2024-64), and 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR-NYSE-2025-12, SR-NYSEAMER-2025-21, SR-NYSEARCA-2025-29, SR-NYSETEX-2025-03, and SR-NYSENAT-2025-07).

⁸ *Id.*

A User that has two TF VCCs is subject to fees for two VCCs. However, in some cases only one of a User's two TF VCCs would be able to be active at a given time. More specifically, a User could have two TF VCCs that connect the MDC and the User's or third party's equipment on a Trading Floor. Two networks operate on each Trading Floor. To ensure resiliency, a User may choose to connect through two different Trading Floor networks. If the two TF VCCs are connected to different Trading Floor networks, only one such network is active at a given time. As a result, the User would not be able to use both TF VCCs at the same time. A User may nonetheless have such a set-up because it is more resilient than either having just one TF VCC or having two TF VCCs that connect to the same Trading Floor network.

The Exchange wants to encourage the use of two TF VCCs that connect through two different Trading Floor networks (each, a "Resilient TF VCC"), as it is a more resilient set-up than if they are through the same network. Accordingly, the Exchange proposes to charge for the two Resilient TF VCCs as if they were one TF VCC.

To make the change, the Exchange proposes to amend the footnote to the VCC description in the Fee Schedule as follows (additions italicized):

* A virtual control circuit ("VCC") is between the Mahwah data center and a single end point, including a Trading Floor, while a virtual routing and forwarding service ("VRF") can be between the Mahwah data center and one or more Trading Floors. If the User chooses VCCs or a combination of a VCC and a VRF for connectivity to several Trading Floors, it will be charged separately for each connection, *provided that two VCCs from the Mahwah data center to the same Trading Floor will be subject to one VCC charge so long as only one VCC is able to be active at a given time.* If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

The proposed language includes the modifying phrase "so long as only one VCC is able to be active at a given time" to clarify that if a User has two TF VCCs that use the same network, the User will be subject to two charges, since the TF VCCs may be active at the same time.

General

Currently, no User has a Resilient TF VCC, and so no User would benefit from the change.

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it

would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS expects that the proposed rule change will not result in any new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable because it is designed to foster the resilience of TF VCCs. Currently, there are no Users with Resilient TF VCCs, and the Exchange believes that charging for two Resilient TF VCCs as if they were one TF VCC may motivate Users to have Resilient TF VCCs. Moreover, as only one Resilient TF VCC can be in use at any one time, no User will benefit from having two Resilient TF VCCs in use while only paying for one.

The Exchange believes that it is reasonable and equitable to amend the note to the Fee Schedule to clarify that,

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

provided that the User has two TF VCCs from the MDC to the same Trading Floor, the User will be subject to one TF VCC charge so long as only one TF VCC is able to be active at a given time. By so amending the note, the Exchange would make it easier for potential purchasers of the service to assess what connectivity will best serve them. The Exchange believes that it is reasonable and equitable that, if a User has two TF VCCs that are active at the same time, for example by using the same Trading Floor network, the User will continue to be subject to two charges.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Currently, 17 telecommunications service providers ("Telecoms")¹² operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹³ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁴ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an

advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally. All Users that have two Resilient TF VCCs, *i.e.*, that connect to the same TF and use different networks and so are not able to be active at the same time, would be charged as if they had one TF VCC. All Users that have two TF VCCs that are not resilient, for example that use the same Trading Floor network, will continue to be subject to two charges.

There is no limit on the number of Resilient TF VCCs a User may obtain. Accordingly, a User could have two Resilient TF VCCs to each Trading Floor, or a number of Resilient TF VCCs to one Trading Floor.

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁵

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange. Rather, it would encourage Users to have resilient VCCs between the MDC and the Trading

Floors. The Exchange believes that amending the note to the Fee Schedule would make it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁶ and Rule 19b-4(f)(2) thereunder¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2026-07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEAMER-2026-07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

¹² Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹³ See Securities Exchange Act Release No. 97999 (July 26, 2023), 88 FR 50190 (August 1, 2023) (SR-NYSEAMER-2023-36).

¹⁴ See *id.* at 50193. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4.

post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2026-07 and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02584 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35937; File No. 812-15790]

Origin Real Estate Credit Fund and Origin Credit Advisers, LLC

February 5, 2026.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares, to impose early withdrawal charges, and to impose asset-based distribution and/or service fees.

APPLICANTS: Origin Real Estate Credit Fund (formerly Origin Real Estate Credit Interval Fund) and Origin Credit Advisers, LLC.

FILING DATES: The application was filed on May 9, 2025 and June 4, 2025, and amended on August 27, 2025, January 7, 2026, and February 4, 2026.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may

request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. The email should include the file number referenced above. Hearing requests should be received by the Commission by 5:30 p.m., Eastern time, on March 2, 2026, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Thomas Briney, Origin Credit Advisers, LLC, 4600 S Syracuse Street, Suite 310, Denver, CO 80237, Joseph M. Mannon, Esq., Vedder Price P.C., jmannon@vedderprice.com and Nathaniel Segal, Esq., Vedder Price P.C., nsegal@vedderprice.com.

FOR FURTHER INFORMATION CONTACT: Erin Loomis Moore, Senior Counsel, or Matthew Cook, Acting Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated February 4, 2026, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/search-filings>. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02587 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104775; File No. SR-NYSEARCA-2026-06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

February 5, 2026.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 ("Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that, on January 28, 2026, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the note to the virtual routing and forwarding and virtual control circuit service in the Connectivity Fee Schedule ("Fee Schedule"). The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the note to the virtual routing and

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

¹⁸ 17 CFR 200.30-3(a)(12).

forwarding (“VRF”) and virtual control circuit (“VCC”) service in the Fee Schedule.

Currently, the Fee Schedule includes VCC services between the Mahwah, New Jersey data center (“MDC”) ⁴ and the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca trading floors (“Trading Floors”) ⁵ (each, a “TF VCC”), as well as between two Users ⁶ in the MDC or a between a User inside the MDC and another party or the same User outside of the MDC at a remote access center.⁷ The Fee Schedule also includes VRF services between the MDC and the Trading Floors.⁸

A User that has two TF VCCs is subject to fees for two VCCs. However, in some cases only one of a User’s two TF VCCs would be able to be active at a given time. More specifically, a User could have two TF VCCs that connect the MDC and the User’s or third party’s equipment on a Trading Floor. Two networks operate on each Trading Floor. To ensure resiliency, a User may choose to connect through two different Trading Floor networks. If the two TF VCCs are connected to different Trading Floor networks, only one such network is active at a given time. As a result, the User would not be able to use both TF VCCs at the same time. A User may nonetheless have such a set-up because

it is more resilient than either having just one TF VCC or having two TF VCCs that connect to the same Trading Floor network.

The Exchange wants to encourage the use of two TF VCCs that connect through two different Trading Floor networks (each, a “Resilient TF VCC”), as it is a more resilient set-up than if they are through the same network. Accordingly, the Exchange proposes to charge for the two Resilient TF VCCs as if they were one TF VCC.

To make the change, the Exchange proposes to amend the footnote to the VCC description in the Fee Schedule as follows (additions italicized):

* A virtual control circuit (“VCC”) is between the Mahwah data center and a single end point, including a Trading Floor, while a virtual routing and forwarding service (“VRF”) can be between the Mahwah data center and one or more Trading Floors. If the User chooses VCCs or a combination of a VCC and a VRF for connectivity to several Trading Floors, it will be charged separately for each connection, *provided that two VCCs from the Mahwah data center to the same Trading Floor will be subject to one VCC charge so long as only one VCC is able to be active at a given time.* If the User chooses one VRF for connectivity to multiple trading floors, the User will be charged for one connection.

The proposed language includes the modifying phrase “so long as only one VCC is able to be active at a given time” to clarify that if a User has two TF VCCs that use the same network, the User will be subject to two charges, since the TF VCCs may be active at the same time.

General

Currently, no User has a Resilient TF VCC, and so no User would benefit from the change.

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS expects that the proposed rule change will not result in any new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable because it is designed to foster the resilience of TF VCCs. Currently, there are no Users with Resilient TF VCCs, and the Exchange believes that charging for two Resilient TF VCCs as if they were one TF VCC may motivate Users to have Resilient TF VCCs. Moreover, as only one Resilient TF VCC can be in use at any one time, no User will benefit from having two Resilient TF VCCs in use while only paying for one.

The Exchange believes that it is reasonable and equitable to amend the note to the Fee Schedule to clarify that, provided that the User has two TF VCCs from the MDC to the same Trading Floor, the User will be subject to one TF VCC charge so long as only one TF VCC is able to be active at a given time. By so amending the note, the Exchange would make it easier for potential purchasers of the service to assess what connectivity will best serve them. The Exchange believes that it is reasonable and equitable that, if a User has two TF VCCs that are active at the same time, for example by using the same Trading Floor network, the User will continue to be subject to two charges.

Nor does the Exchange have a competitive advantage over any third-

⁴ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs (as defined below) are indirect subsidiaries of ICE.

⁵ “Trading Floor” is used as defined in, as applicable, NYSE Rule 6A (Trading Floor), NYSE American Scope of Terms (17), and NYSE Arca Rule 1 (Definitions), Floor, Trading Floor and Options Trading Floor. NYSE National, Inc. and NYSE Texas, Inc. do not have trading floors. See Securities Exchange Act Release No. 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR–NYSE–2025–12, SR–NYSEAMER–2025–21, SR–NYSEARCA–2025–29, SR–NYSETEX–2025–03, and SR–NYSENAT–2025–07).

⁶ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC, NYSE American LLC, NYSE National, Inc. and NYSE Texas, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change described herein. See SR–NYSE–2026–03, SR–NYSEAMER–2026–07, SR–NYSENAT–2026–02, and SR–NYSETEX–2026–01.

⁷ See Securities Exchange Act Release Nos. 101576 (November 12, 2024), 80 FR 90775 (November 18, 2024) (SR–NYSEArca–2024–91), and 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR–NYSE–2025–12, SR–NYSEAMER–2025–21, SR–NYSEARCA–2025–29, SR–NYSETEX–2025–03, and SR–NYSENAT–2025–07).

⁸ *Id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Currently, 17 telecommunications service providers ("Telecoms")¹² operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹³ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁴ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally. All

Users that have two Resilient TF VCCs, *i.e.* that connect to the same TF and use different networks and so are not able to be active at the same time, would be charged as if they had one TF VCC. All Users that have two TF VCCs that are not resilient, for example that use the same Trading Floor network, will continue to be subject to two charges.

There is no limit on the number of Resilient TF VCCs a User may obtain. Accordingly, a User could have two Resilient TF VCCs to each Trading Floor, or a number of Resilient TF VCCs to one Trading Floor.

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁵

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange. Rather, it would encourage Users to have resilient VCCs between the MDC and the Trading Floors. The Exchange believes that amending the note to the Fee Schedule would make it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁶ and Rule 19b-4(f)(2) thereunder¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2026-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSEARCA-2026-06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2026-06

¹² Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹³ See Securities Exchange Act Release No. 98000 (July 26, 2023), 88 FR 50244 (August 1, 2023) (SR-NYSEARCA-2023-47).

¹⁴ See *id.* at 50246. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4.

and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02585 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104770; File No. SR-NYSEAMER-2026-09]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List and Fee Schedule

February 5, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2026, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List and Fee Schedule (“Fee Schedule”) to conform with a recent amendment to Rule 610 of Regulation NMS recently approved by the Securities and Exchange Commission (“SEC” or the “Commission”).³ The proposed rule change is available on the Exchange’s website at www.nyse.com, and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to conform with a recent amendment to Rule 610 of Regulation NMS (“Reg NMS”) recently approved by the Commission. The Exchange proposes to implement the fee change effective February 2, 2026.

In 2022, the Commission proposed to amend certain rules under Reg NMS after taking into account the availability of “[n]ew data processing and communications techniques [that] create the opportunity for more efficient and effective market operations”⁴ and that is in the public interest, appropriate for investor protection and the maintenance of fair and orderly markets to assure “economically efficient execution of securities transactions,” “fair competition among brokers and dealers, among exchange markets,” and “the practicality of brokers executing investors’ orders in the best market.”⁵ These changes included an amendment to Rule 610 of Reg NMS that prohibits a national securities exchange from imposing, or permitting to be imposed, any fee, or providing, or permitting to be provided, any rebate or other remuneration for the execution of an order in an NMS stock unless such fee, rebate, or other remuneration can be determined at the time of execution.⁶ As amended, Rule 610 of Reg NMS provides that any national securities exchange that imposes a fee or provides a rebate that is based on a certain volume threshold, or establishes tier requirements or tiered rates based on minimum volume thresholds, would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate.

These amendments to Rule 610 of Reg NMS were to become effective on November 3, 2025, the first business day of November 2025. On October 31, 2025, the Commission provided temporary exemptive relief to the exchanges to adjust their fee schedules to comply

with the requirements of Rule 610 that exchange fees be determinable at the time of execution until the first business day of February 2026.⁷

In anticipation of the upcoming compliance date, the Exchange proposes several amendments to its Price List in order to conform to Rule 610 of Reg NMS, as follows.

First, the Exchange proposes to amend its Fee Schedule to add a new bullet point to the list of bullet points at the top of the Fee Schedule to provide:

- All transaction tier calculations to determine the fee/rebate an ETP Holder will incur/earn for the billing month are based on the ETP Holder’s trading activity in the prior month, unless otherwise specified.

Second, in Section I.B (Monthly Quoting Credits), the Exchange proposes to edit the description in each of the two bullet points to clarify that both the calculation of the monthly credit and eligibility for the monthly credit will be “in the current billing month.”

Third, in Section II.B (Monthly Credits), the Exchange proposes to replace references to “in that month” with references to “in the billing month.”

Finally, in Section II.C (Market Data Revenue), the Exchange proposes to add “in the billing month” to the end of the description.

As noted above, the changes proposed herein are intended to conform to Rule 610 of Reg NMS to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution. The Exchange does not propose any other changes to the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

⁷ See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) (Order Granting Temporary Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rules 610(f) and 612(d) of Regulation NMS, From Compliance With Rule 600(b)(89)(i)(F), Rule 610(c), Rule 610(d) and Rule 612 of Regulation NMS, as Amended). The lapse in appropriations began on October 1, 2025, and ended on November 12, 2025.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101070 (September 18, 2024), 89 FR 81620 (October 8, 2024) (S7-30-22).

⁴ 15 U.S.C. 78k-1(a)(1)(B).

⁵ 15 U.S.C. 78k-1(a)(1)(c)(i), (ii), and (iv).

⁶ See Release No. 101070, 89 FR at 81680.

discriminate between customers, issuers, brokers or dealers.

As described above, the proposed amendments to the Exchange's Price List are being made to conform with recent amendments to Rule 610 of Reg NMS that all exchange fees and rebates to be determinable at the time of execution. The changes proposed herein are thus designed to enable market participants to determine what fee or rebate level would be applicable to any submitted order at the time of execution as required by the Act. The proposed rule change would provide clarity to market participants, including investors, to determine what fee or rebate level would be applicable to any submitted order at the time of execution and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that the Exchange's Fee Schedule properly reflect the requirements of Rule 610 of Reg NMS. The Exchange also believes that the proposed rule change would remove impediments to and perfects the mechanism of a free and open market by ensuring that market participants and the investing public can more easily navigate and understand the Exchange's Fee Schedule. The proposed rule change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased transparency and clarity, thereby reducing potential confusion. Finally, by providing greater determinism to the Exchange's Price List consistent with Rule 610(d) of Reg NMS, the Exchange believes that the proposed fee change is therefore reasonable. Moreover, since the proposed changes would apply equally to all member organizations on an equal and non-discriminatory basis, the Exchange further believes that the proposal equitably allocates fees and credits among market participants and is not unfairly discriminatory.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed rule change does not impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule

change to amend the Exchange's Fee Schedule to conform to a recent amendment to Rule 610 of Reg NMS is not intended to address competitive issues but rather is concerned solely with ensuring that the Exchange's Fee Schedule properly reflects the requirements of Rule 610 of Reg NMS that is to be implemented in February 2026.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁰ and Rule 19b-4(f)(2) thereunder¹¹ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2026-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSEAMER-2026-09. This

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4.

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEAMER-2026-09 and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02581 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104776; File No. SR-NYSETEX-2026-01]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

February 5, 2026.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 28, 2026, the NYSE Texas, Inc. ("NYSE Texas" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the note to the virtual routing and forwarding and virtual control circuit

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

service in the Connectivity Fee Schedule (“Fee Schedule”). The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the note to the virtual routing and forwarding (“VRF”) and virtual control circuit (“VCC”) service in the Fee Schedule.

Currently, the Fee Schedule includes VCC services between the Mahwah, New Jersey data center (“MDC”) ⁴ and the New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. trading floors (“Trading Floors”) ⁵ (each, a “TF VCC”), as well as between two Users ⁶ in the MDC or a between a

User inside the MDC and another party or the same User outside of the MDC at a remote access center.⁷ The Fee Schedule also includes VRF services between the MDC and the Trading Floors.⁸

A User that has two TF VCCs is subject to fees for two VCCs. However, in some cases only one of a User’s two TF VCCs would be able to be active at a given time. More specifically, a User could have two TF VCCs that connect the MDC and the User’s or third party’s equipment on a Trading Floor. Two networks operate on each Trading Floor. To ensure resiliency, a User may choose to connect through two different Trading Floor networks. If the two TF VCCs are connected to different Trading Floor networks, only one such network is active at a given time. As a result, the User would not be able to use both TF VCCs at the same time. A User may nonetheless have such a set-up because it is more resilient than either having just one TF VCC or having two TF VCCs that connect to the same Trading Floor network.

The Exchange wants to encourage the use of two TF VCCs that connect through two different Trading Floor networks (each, a “Resilient TF VCC”), as it is a more resilient set-up than if they are through the same network. Accordingly, the Exchange proposes to charge for the two Resilient TF VCCs as if they were one TF VCC.

To make the change, the Exchange proposes to amend the footnote to the VCC description in the Fee Schedule as follows (additions italicized):

* A virtual control circuit (“VCC”) is between the Mahwah data center and a single end point, including a Trading Floor, while a virtual routing and forwarding service (“VRF”) can be between the Mahwah data center and one or more Trading Floors. If the User chooses VCCs or a combination of a VCC and a VRF for connectivity to several Trading Floors, it will be charged separately for each connection, *provided that two VCCs from the Mahwah data center to the same Trading Floor will be subject to one VCC charge so long as only one VCC is able to be active at a given time.* If the User chooses one VRF for connectivity to

multiple trading floors, the User will be charged for one connection.

The proposed language includes the modifying phrase “so long as only one VCC is able to be active at a given time” to clarify that if a User has two TF VCCs that use the same network, the User will be subject to two charges, since the TF VCCs may be active at the same time.

General

Currently, no User has a Resilient TF VCC, and so no User would benefit from the change.

The proposed rule change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the Fee Schedule would be applied uniformly to all Users. FIDS expects that the proposed rule change will not result in any new Users.

Use of the services proposed in this filing are completely voluntary and available to all Users on a non-discriminatory basis.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that customers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and

⁴ Through its Fixed Income and Data Services (“FIDS”) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange and the Affiliate SROs (as defined below) are indirect subsidiaries of ICE.

⁵ “Trading Floor” is used as defined in, as applicable, NYSE Rule 6A (Trading Floor), NYSE American Scope of Terms (17), and NYSE Arca Rule 1 (Definitions), Floor, Trading Floor and Options Trading Floor. NYSE National, Inc. and NYSE Texas, Inc. do not have trading floors. See Securities Exchange Act Release No. 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR-NYSE-2025-12, SR-NYSEAMER-2025-21, SR-NYSEARCA-2025-29, SR-NYSETEX-2025-03, and SR-NYSENAT-2025-07).

⁶ For purposes of the Exchange’s colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 at n.6 (November 1, 2019) (SR-NYSECHX-2019-12). As specified in the Fee Schedule, a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the change

described herein. See SR-NYSE-2026-03, SR-NYSEAMER-2026-07, SR-NYSEARCA-2026-06, and SR-NYSENAT-2026-02.

⁷ See Securities Exchange Act Release Nos. 101577 (November 12, 2024), 89 FR 90893 (November 18, 2024) (SR-NYSECHX-2024-31, and 103546 (July 25, 2025), 90 FR 35950 (July 30, 2025) (SR-NYSE-2025-12, SR-NYSEAMER-2025-21, SR-NYSEARCA-2025-29, SR-NYSETEX-2025-03, and SR-NYSENAT-2025-07).

⁸ *Id.*

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change is reasonable and equitable because it is designed to foster the resilience of TF VCCs. Currently, there are no Users with Resilient TF VCCs, and the Exchange believes that charging for two Resilient TF VCCs as if they were one TF VCC may motivate Users to have Resilient TF VCCs. Moreover, as only one Resilient TF VCC can be in use at any one time, no User will benefit from having two Resilient TF VCCs in use while only paying for one.

The Exchange believes that it is reasonable and equitable to amend the note to the Fee Schedule to clarify that, provided that the User has two TF VCCs from the MDC to the same Trading Floor, the User will be subject to one TF VCC charge so long as only one TV VCC is able to be active at a given time. By so amending the note, the Exchange would make it easier for potential purchasers of the service to assess what connectivity will best serve them. The Exchange believes that it is reasonable and equitable that, if a User has two TF VCCs that are active at the same time, for example by using the same Trading Floor network, the User will continue to be subject to two charges.

Nor does the Exchange have a competitive advantage over any third-party competitors by virtue of the fact that it owns and operates the MDC's meet-me-rooms. Currently, 17 telecommunications service providers ("Telecoms")¹² operate in the meet-me-rooms and provide a variety of circuit choices. It is in the Exchange's best interest to set the fees that Telecoms pay to operate in the meet-me-rooms at a reasonable level¹³ so that market participants, including Telecoms, will maximize their use of the MDC. By setting the meet-me-room fees at a reasonable level, the Exchange encourages Telecoms to participate in the meet-me-rooms and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include

cabinets, power, ports, and connectivity to many third-party data feeds, and because having more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the meet-me-room fees at a level attractive to telecommunications firms, the Exchange spurs demand for all of the services it sells at the MDC, while setting the meet-me-room fees too high would negatively affect the Exchange's ability to sell its services at the MDC.¹⁴ Accordingly, there are real constraints on the meet-me-room fees the Exchange charges, such that the Exchange does not have an advantage in terms of costs when compared to third parties that enter the MDC through the meet-me-rooms to provide services to compete with the Exchange's services.

The Exchange believes that the proposed change provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because it is not designed to permit unfair discrimination between market participants. Rather, it would apply to all market participants equally. All Users that have two Resilient TF VCCs, *i.e.*, that connect to the same TF and use different networks and so are not able to be active at the same time, would be charged as if they had one TF VCC. All Users that have two TF VCCs that are not resilient, for example that use the same Trading Floor network, will continue to be subject to two charges.

There is no limit on the number of Resilient TF VCCs a User may obtain. Accordingly, a User could have two Resilient TF VCCs to each Trading Floor, or a number of Resilient TF VCCs to one Trading Floor.

The Exchange believes its proposal is not unfairly discriminatory. The proposed change does not apply differently to distinct types or sizes of market participants. Rather, it applies to all market participants equally. The purchase of any proposed service is completely voluntary and the Fee Schedule will be applied uniformly to all market participants.

For the reasons above, the proposed change does not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms, and conditions

established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.¹⁵

The proposed change would not impose a burden on competition among national securities exchanges or among members of the Exchange. Rather, it would encourage Users to have resilient VCCs between the MDC and the Trading Floors. The Exchange believes that amending the note to the Fee Schedule would make it easier for potential purchasers of the service to assess what connectivity will best serve them.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁶ and Rule 19b-4(f)(2) thereunder¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹² Telecoms are licensed by the Federal Communications Commission and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

¹³ See Securities Exchange Act Release No. 98001 (July 26, 2023), 88 FR 50202 (August 1, 2023) (SR-NYSECHX-2023-14).

¹⁴ See *id.* at 50199. Importantly, the Exchange is prevented from making any alteration to its meet-me-room services or fees without filing a proposal for such changes with the Commission.

¹⁵ 15 U.S.C. 78f(b)(8).

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4.

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSETEX-2026-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSETEX-2026-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSETEX-2026-01 and should be submitted on or before March 3, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2026-02586 Filed 2-9-26; 8:45 am]

BILLING CODE 8011-01-P

TENNESSEE VALLEY AUTHORITY**Sunshine Act Meetings**

TIME AND DATE: 9:00 a.m. CT on February 11, 2026.

PLACE: James E. Bruce Convention Center, Hopkinsville, Kentucky.

STATUS: Open.

MATTERS TO BE CONSIDERED:**Meeting No. 26-01**

The TVA Board of Directors will hold a public meeting on February 11 at the James E. Bruce Convention Center, 303 Conference Center Drive, in Hopkinsville, Kentucky. The meeting will be called to order at 9:00 a.m. CT to consider the agenda items listed below.

On February 10, at the James E. Bruce Convention Center, the public may comment on any agenda item or subject at a Board-hosted public listening session, which begins at 2:00 p.m. CT and will last until 4:00 p.m. Preregistration is required to address the Board.

Agenda

1. Approval of Minutes of the November 6, 2025 Board Meeting
2. Report of the People and Governance Committee
 - A. Revision of Approved Strategic Elements and Revision of People and Governance Committee Charter
 - B. Revision of Approved Long-term Incentive Plan Measures and Goals
3. Report of the Audit, Risk, and Cybersecurity Committee
4. Report of the Operations and Nuclear Oversight Committee
5. Report of the External Stakeholders and Regulation Committee
 - A. Load Greater than 100 MWs
 - B. Revision of External Stakeholders and Regulation Committee Charter
6. Report of the Finance, Rates, and Portfolio Committee
 - A. Cumberland and Kingston Evaluations
7. Report from President and CEO
8. Information Item
 - A. Committee Assignments

CONTACT PERSON FOR MORE INFORMATION:

For more information: Please contact Melissa Greene, TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 4, 2026.

Edward C. Meade,
Agency Liaison.

[FR Doc. 2026-02661 Filed 2-6-26; 4:15 pm]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. FAA-2026-0661]

**FAA Aircraft Noise Complaint and Inquiry System (Noise Portal);
Correction**

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: On January 20, 2026, FAA published a notice regarding the FAA

Aircraft Noise Complaint and Inquiry System (Noise Portal) that omitted the docket number. This document corrects that omission. On February 4, 2026, FAA published a notice regarding the FAA Aircraft Noise Complaint and Inquiry System (Noise Portal) had an incorrect docket number. This document corrects the docket number.

FOR FURTHER INFORMATION CONTACT:

Nitin Rao, Manager, National Engagement Strategy and Policy Division (ARA-200), Federal Aviation Administration, by email at: 9-APL-ANCIR-Comments@faa.gov; or by phone: 202-267-0965.

SUPPLEMENTARY INFORMATION:**Correction**

In the **Federal Register** of January 20, 2026, Vol. 91, No. 12, on page 2416, in the second column, in the document heading, correct the docket number to read: [Docket No. FAA-2026-0661].

In the **Federal Register** of February 4, 2026, Vol. 91, No. 23, on page 5150, in the second column, in the document heading, correct the docket number to read: [Docket No. FAA-2026-0661].

Nitin Rao,

Manager, National Engagement Strategy and Policy Division, Federal Aviation Administration.

[FR Doc. 2026-02620 Filed 2-9-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION
**Federal Motor Carrier Safety
Administration**

[Docket No. FMCSA-2026-0101]

**Parts and Accessories Necessary for
Safe Operation; Application for an
Exemption From Liberty Bulk
Transport, LLC, USDOT#3256390**

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 an application from Liberty Bulk Transport, LLC, (Liberty, USDOT No. 3256390) for an exemption from the requirement that lighting devices be steady burning. The exemption would allow the company to operate commercial motor vehicles (CMVs) equipped with a module manufactured by Intellistop, Inc. (Intellistop) which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes

¹⁸ 17 CFR 200.30-3(a)(12).

are applied. FMCSA requests public comment on the applicant's request for exemption.

DATES: Comments must be received on or before March 12, 2026.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2026–0101 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, W58–213, Washington, DC 20590–0001.
- **Hand Delivery or Courier:** 1200 New Jersey Avenue SE, W58–213, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2026–0101) 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, 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: Mr. David Sutula, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202)–961–1373, or by email at MCPSV@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–2026–0101), indicate the specific section of this document to

which the comment applies, and provide a reason for 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-2026-0101/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–2026–0101 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 Docket Operations in room W58–213 of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., 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 Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved 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

Liberty seeks an exemption from the requirement in 49 CFR 393.25(e) that all exterior lamps (both required lamps and any additional lamps) be steady burning, except for turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and

service vehicles authorized by State or local authorities.

Liberty asserts that using the Intellistop module, which pulses the rear clearance, identification, and brake lamps from low-level lighting intensity to high-level lighting intensity 4 times in 2 seconds when the brakes are applied rather than providing steady burning lamps during the first 2 seconds, would enhance rear signal systems. Liberty submits that pulsing the rear brake lamps of a CMV may significantly increase visibility and reduce the frequency of rear-end crashes, and thus would maintain a level of safety that is equivalent to, or greater than, the level that the CMV would achieve without the requested exemption.

On October 7, 2022, FMCSA denied Intellistop's application for an industry-wide exemption (87 FR 61133) to allow all motor carriers to operate CMVs equipped with Intellistop's module. FMCSA noted that the decision did not preclude individual motor carriers from seeking an exemption from 49 CFR 393.25(e) to purchase, install, and use Intellistop's device subject to terms and conditions to allow sufficient monitoring of the use of the device. Consistent with the October 7, 2022, decision, the Agency seeks public comment on Liberty's carrier-specific exemption application.

A copy of Liberty's application and supporting materials 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 Liberty's application for an exemption from the requirements of 49 CFR 393.25(e).

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 may 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 for Policy.

[FR Doc. 2026-02616 Filed 2-9-26; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2025-0059]

Agency Information Collection Activities; Notice and Request for Comment; Distraction: Modern Voice Command Interfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new collection of information.

SUMMARY: NHTSA invites public comments about the Agency's intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval to conduct research on safety-related aspects of voice command interfaces (VCIs), specifically how VCIs affect distracted driving behavior and cognitive workload.

DATES: Comments must be submitted on or before April 13, 2026.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2025-0059 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any

personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of the Agency's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jeffrey Dressel Office of Vehicle Safety Research, Human Factors/Engineering Integration Division NSR-310, West Building, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; jeffrey.dressel@dot.gov; 202-493-0492.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public

comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Distraction: Modern Voice Command Interfaces.

OMB Control Number: New data collection.

Form Number(s):

- NHTSA Form 2071: Eligibility Questionnaire
- NHTSA Form 2072: Scheduling Form
- NHTSA Form 2073: Pre-Study Materials
- NHTSA Form 2074: Appointment Confirmation Form
- NHTSA Form 2075: Informed Consent Document
- NHTSA Form 2076: Daily Health Survey
- NHTSA Form 2077: Simulator Sickness Questionnaire (SSQ)
- NHTSA Form 2078: Task Novelty Assessment
- NHTSA Form 2079: Debrief

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of

Approval: 3 years from date of approval.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) is seeking approval to collect information from the public as part of an effort to understand the effects of currently or near-to-deployed (modern) voice command interfaces (VCIs) in vehicles. The research compares multiple tasks across prominent VCI systems to identify both positive and negative effects on cognitive workload and distraction. The research involves one study session at Dynamic Research, Inc. (DRI) to complete a series of drives in a driving simulator. Participants will complete tasks using a voice command interface (VCI) system that they are familiar with in a vehicle they drive regularly. Data collection will involve human-subjects data collection, and all data collection procedures will be approved by DRI's Institutional Review Board (IRB). Data collection will only begin upon receipt of PRA clearance. Data collection will occur in four phases, one phase for each vehicle that must be installed and instrumented in the driving simulator.

Data from a final sample of 144 participants will be used to compare the six VCI systems, resulting in 24 participants per VCI system group. We anticipate participant attrition at several steps of the recruitment process. First, a recruitment survey (NHTSA Form 2071: Eligibility Questionnaire) will be sent to potential respondents in DRI's participant database as well as posted

on social media sites to aid in the recruitment process ($n = 1330$ respondents). Next, 198 individuals will be identified based on eligibility and counterbalancing criteria and invited to schedule a session and complete pre-study forms. We anticipate an attrition rate of 10 percent with 178 participants completing NHTSA Form 2072: Scheduling Form, NHTSA Form 2073: Pre-Study Materials, and NHTSA Form 2074: Appointment Confirmation Form. Upon arriving to the study session, we expect approximately 17 participants will experience simulator sickness based on prior research, resulting in a sample size of 160 for completion of the study. Informed by previous research, approximately 16 participants (10 percent) are expected to be removed from the final dataset due to problems with data quality, leaving a final sample size of 144 participants.

As indicated, participants will be recruited from DRI's participant database, as well as the general populace as needed. Participants will be restricted to individuals who have experience with the targeted system/vehicle being evaluated in the data collection, possess normal or corrected-to-normal vision and hearing, are 18–70 years old, are fluent in English, possess a valid driver's license, drive a predefined number of miles per year, are able to participate in the study for 2.5 hours, can abstain from alcoholic, recreational, and illicit substances for the 12 hours before the data collection session, have no medical condition that limits or restricts driving, are not susceptible to motion sickness (based on self-report), require no special driving equipment, have had no seizures within 6 months, are not using sedatives or psychotropic medications, and are not pregnant. Sociodemographic characteristics will be balanced between groups as outlined in the Visual-Manual NHTSA Driver Distraction Guidelines for In-Vehicle Electronic Devices.

Participants will physically sign NHTSA Form 2075: Informed Consent Document the day of their session before beginning the experiment. Participants will complete Intake Procedures, including NHTSA Form 2076: Daily Health Survey to ensure that participants are feeling well enough to participate, correctly reported their age and sex (for balancing of conditions), and complete a driving simulator familiarization drive. The study involves participants driving a vehicle (in a simulated environment) that they are familiar with and using a VCI and a manual interface to accomplish a series of tasks. Currently, nine drives are planned, including one simulator

familiarization drive and eight study drives. Study drives consist of seven task drives and one safety-critical event (SCE) drive. The task drives will be counterbalanced to control for order effects. Due to the possibility of subsequent driver behavior change after the SCE, the SCE drive will occur last. Participants will also be randomized into completing a VCI task or visual-manual task during the SCE. The SCE event is anticipated to be a covered-to-revealed road obstruction requiring participant intervention, such as braking to avoid a crash.

Participants will undergo training before each task drive to ensure understanding and execution ability. Tasks will consist of three common tasks executed with the VCI, the same three tasks executed manually using the touchscreen interface, and one unique task that is not shared among the other systems and only completed through the VCI. An example task would be navigating to a nearby grocery store and adding a waypoint to an en route gas station. After each training session, participants will be asked one question to ascertain task novelty.

The tasks may change slightly based on the capabilities of VCI systems and interfaces after PRA approval; however, anticipated burden will not change. Similarly, vehicles will be chosen based on system availability including Android Auto, Apple CarPlay, Google Built-In as well as the functionality of the original equipment manufacturer (OEM) systems. We anticipate assessing six systems across four vehicles identified based on both the annual technology scan and the ability to recruit participants that regularly use that system. The six systems will consist of three third-party systems (Android Auto, Apple CarPlay, Google-Built-In) and three OEM systems.

During training prior to the task drives, we will document and classify the types of errors made to answer one of NHTSA's research questions. We will collect data to ascertain the effects of each task on driver performance, distraction, and cognitive workload. Metrics of driver performance include standard deviation of lane position (SDLP), standard deviation of speed (SDS), and speed differential (Sdf). Driver distraction metrics are gathered from eye-tracking data, including mean glance duration (MGD), total glance time (TGT), and the proportion of long glances (PLG) that are longer than two seconds, all of which are calculated per NHTSA's distraction guidelines. Cognitive workload will be assessed via pupil diameter (PD), heart rate variability (HRV), and miss rate and

response time for the tactile detection response task (TDRT).

Description of the Need for the Information and Proposed Use of the Information: NHTSA's mission is to save lives, prevent injuries, and reduce the economic costs of road traffic crashes through education, research, safety standards, and enforcement activity. As vehicle technologies advance, they have the potential to dramatically reduce the loss of life each day in roadway crashes. Alternatively, the systems may not reach this potential or could potentially decrease safety when drivers do not understand how to safely interact with the systems or do not understand the capabilities and limitations. This new information collection request is for a single study to understand the effects of voice command interfaces on driver cognitive workload and distraction across the most common VCI systems. This research supports NHTSA's mission of safety.

- *NHTSA Form 2071: Eligibility Questionnaire*—This questionnaire establishes whether participants are eligible to participate. The components include (1) a PRA statement informing participants about the rules governing federally funded research; (2) a privacy notice of data collected and used per California state laws; (3) consent for eligibility questionnaire and study introduction and description to inform participants about the study specific data to be collected; (4) eligibility questionnaire to identify participants based on eligibility criteria; (5) general health questionnaire to identify potential health concerns that prevent participation; and (6) contact information for scheduling purposes. To participate in the study, individuals must have experience with the system/vehicle, have normal or corrected-to-normal hearing, be 18–70 years old, meet specific vision requirements (e.g., wear contacts while driving), have English fluency, possess a valid driver's license, drive a predefined number of miles per year, have the ability to participate in the study for 2.5 hours, abstain from alcoholic, recreational, or illegal substances for 12 hours before the session, have no medical conditions that limit or restrict driving, are not susceptible to motion sickness (based on self-report), require no special driving equipment, have no history of seizures within 6 months, not taking sedatives or psychotropic medications, have a valid social security number or tax identification number, and must not be pregnant. Among those deemed eligible, we will ensure a balanced representation of ages and sexes. We

anticipate 330 responses from DRI's driver database and 1000 responses from external sources (e.g., social media), with an average completion time of 10 minutes.

- *NHTSA Form 2072: Scheduling Form*—This form is required as it serves to establish potential participant interest in participating and scheduling a session. The data collected consists of the participant's name, study date, and time. This is an email sent to eligible participants to confirm their interest in participating in the study. We anticipate contacting 198 potential participants to schedule a session, of which 178 are expected to follow through to form completion and session scheduling. We anticipate six minutes to complete scheduling. This includes one minute to read the email and an average of five minutes to review their schedule and select timeslots. A link to the vehicle's manufacturer privacy policy per NHTSA's connected vehicles recommendation is provided. Participants are not required to review it, so it was not calculated into the burden estimate.

- *NHTSA Form 2073: Pre-Study Materials*—This form is required as it provides participants with (1) a privacy notice for describing types and purposes of data collection per California state law (read); (2) a confidentiality agreement to protect proprietary DRI information and technology (read and sign); (3) a copy of the informed consent for participant records (signatures will be obtained at the scheduled session); (4) an indemnification form to hold DRI harmless and allow participation in the study (read and sign); and (5) a general information questionnaire to collect participant information (i.e., mailing address, demographic information, health condition). Participants will also receive a copy of the informed consent for their records. We anticipate that it will take nine minutes to read and complete the pre-study materials that is administered to all 178 participants.

- *NHTSA Form 2074: Appointment Confirmation Form*—This form is required to remind participants of their scheduled study session, which will be emailed 48 hours before the appointment. The email is anticipated to take one minute to read and will be sent to all 178 participants. Participants will be asked to respond to the email confirming their attendance, and a researcher will collect their response and store it for reference before the study session. This information will consist of the participant's name, whether they affirmed attendance, and an alternative study session date and time, if necessary. This email contains

the link to the pre-study materials (see above) and a reminder that they must be completed before the study. A link to the vehicle's manufacturer privacy policy per NHTSA's connected vehicles recommendation is provided. Participants are not required to review the manufacturer privacy policy, so it was not calculated into the burden estimate.

- *NHTSA Form 2075: Informed Consent Document*—This form is required as it provides the participants with the description of the study, informs the participants of their rights during the study, and obtains written informed consent. The informed consent document will be printed on paper for participants to physically sign at the beginning of their session. We expect the informed consent process to last 17 minutes.

- *Intake Procedures*—The intake process is required to ensure participant information for compensation, as well as review the driver's license to confirm validity, confirm the driver's age, review eligibility status, and confirm demographic information to aid in balancing demographics across conditions per NHTSA's guidelines. Furthermore, a daily health survey is collected to ensure the participant is feeling well enough to participate. Finally, participants will complete the simulator familiarization drive to ensure they can adequately control the vehicle. The subcomponents of burden can be seen below. The entire procedure (as seen in the burden table below) is anticipated to take approximately 21 minutes.

- *Eligibility Confirmation*—A subcomponent of this process, which is required, is to verify the participant's demographic information (i.e., age and sex) via their license to ensure proper balancing of experimental conditions. This subcomponent is expected to take approximately 2 minutes.

- *NHTSA Form 2076: Daily Health Survey*—A subcomponent of this process will contain a daily health survey that will be administered to ensure participants are feeling well enough to participate. This subcomponent is expected to take approximately 3 minutes to complete.

- *Simulator Familiarization Drive*—This subcomponent is necessary for preparing participants for driving in the simulator. Simulator driving may feel different from regular driving and requires an adjustment period to successfully control the vehicle. Additionally, participants who experience simulator sickness can withdraw from the study. Before entering the vehicle, participants will

receive training on the operation of the vehicle, VCI and manual interface systems, and the Tactile Detection Response Task (TDRT), which is expected to last approximately 10 minutes. Participants will then enter the vehicle and receive additional training lasting about 2 minutes. Next, participants will complete a 3-to-5-minute (4-minute average) familiarization drive to practice driving and responding to the TDRT. Training on the operation of the vehicle and the familiarization drive will take approximately 16 minutes to complete.

- **NHTSA Form 2077: Simulator Sickness Questionnaire**—This form is required to ascertain whether participants feel well enough to continue after the simulator familiarization drive and subsequent study drives (administered 9 times). We anticipate that approximately 17 participants will experience simulator sickness and will withdraw from the study, returning a sample size of 160 participants who complete the study session. The SSQ is important to administer after the last drive because some participants may feel motion sickness due the SCE and would require monitoring from study staff until the symptoms pass. The SSQ is anticipated to take 2 minutes to complete.

- **Data Collection Activities**—This process is required because it contains the information necessary to answer NHTSA's research questions. It is composed of three subcomponents: task training, study drives, and a task novelty assessment form. Each subcomponent is discussed in greater detail below. The subcomponents of burden can be seen below. The entire procedure (as seen in the burden table below) is completed 8 times as is anticipated to take approximately 9 minutes per trial, resulting in overall completion time of 72 minutes.

- **Task Training**—Before each task drive, participants will receive verbal training on how to complete the task from the research staff. This is necessary because participants may not initially comprehend the task, inhibiting task completion and therefore affecting estimates of distraction and cognitive workload. Participants will complete practice trials in the vehicle. Three trials must be completed successfully before participants complete the associated task drive. This subcomponent is anticipated to take 4 minutes to complete per trial, for a total completion time of 32 minutes.

- **NHTSA Form 2078: Task Novelty Assessment**—After training, but before the drive, a single item form entitled Task Novelty Assessment will be administered to assess the frequency of task completion in the participant's daily drive. This subcomponent is anticipated to take 1 minute to complete per trial, for a total completion time of 8 minutes.

- **Study Drives**—This set of procedures will be the source of the primary information collection. Specifically, measures of driver performance, distraction, and cognitive workload will be collected via the driving simulator, TDRT, and physiological sensors (eye-tracking and HRV). The study drives include 8 drives, which are made up of three common VCI task drives, three common visual-manual interface task drives, one unique VCI task drive, and one safety-critical event (SCE) drive. The task drives will be counterbalanced to control for order effects. Due to the potential behavior change post SCE, the SCE drive will occur last, with a covered-to-revealed road obstruction. The common tasks shared by VCI and visual-manual input will be tasks that are regularly completed in vehicles, as identified by the technology scan. The unique task drive will assess a task that

many other systems cannot perform (e.g., sending an email in Apple CarPlay). Each drive is estimated to average 4 minutes per trial (with a range between 3 and 5 minutes), for a total completion time of 32 minutes.

- **NHTSA Form 2079: Debrief**—The debrief is necessary to explain the study purpose and procedures, as well as provide the participant an opportunity to ask questions. Participants will complete an honorarium form after the completion of the debrief. The debrief and honorarium confirmation is expected to last 5 minutes.

Affected Public: Individuals between 18 and 70 years old from Torrance, California and the surrounding areas who volunteer to take part in the driving studies or individuals who opted into receiving research-related emails from DRI will be contacted for participation. Respondents must meet specific eligibility criteria to be included in this information collection. Businesses are ineligible for this sample and will not be contacted.

Estimated Number of Respondents: We estimate 1330 respondents to the eligibility questionnaire between DRI's participant database and social media recruiting. The target sample is 144 valid datasets with 24 participants per system, with attrition planned due to ineligibility, disinterest in participating, simulator sickness, and data collection issues (e.g., equipment malfunction, participant noncompliance).

Frequency: One-time collection.

Estimated Number of Responses: This is a one-time data collection with 144 complete responses planned (i.e., one response per respondent).

Estimated Total Annual Burden Hours: The estimated total burden hours is 637 hours (see table below). All data collection is estimated to occur within the same year, so the annualized hours equal the total hours.

NHTSA form No.	Information collection	Number of respondents	Time per response (minutes)	Frequency of response	Burden hours ¹
2071	Eligibility Questionnaire	1,330	10	1	222
2072	Scheduling Form	198	6	1	20
2073	Pre-Study Materials	178	9	1	27
2074	Appointment Confirmation Form	178	1	1	3
2075	Informed Consent Document	178	17	1	50
2076	Intake Procedures (Eligibility Confirmation, Daily Health Survey, Simulator Familiarization Drive).	178	21	1	62
2077	Simulator Sickness Questionnaire	160	2	9	48
2078	Data Collection Activities (Task Training, Task Novelty Assessment, Study Drives).	160	8	9	192
2079	Debrief (Honorarium)	160	5	1	13
Total Burden Hours .....	.....	.....	.....	.....	637

¹ Values are rounded.

Estimated Total Annual Burden Cost: Participation in this study is voluntary, and there are no costs to respondents beyond the time spent completing the questionnaires and travel costs for the visits to the study facility. The costs are minimal and are expected to be offset by the compensation that will be provided to the research participants.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2026-02598 Filed 2-9-26; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2025-0777; PDA-42(R)]

Hazardous Materials: Preemption Application From Exxon Mobil Corporation; Extension of Comment Period

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice, and extension of comment period.

SUMMARY: PHMSA is extending the period for comments on Exxon Mobil Corporation's application for an administrative determination as to whether the Federal hazardous material transportation law (HMTA) preempts certain state common law tort claims against it regarding the marking, employee training, loading and unloading, and hazardous material classification for gasoline transported by cargo tank motor vehicle.

DATES: The comment period for the Notice published January 9, 2026, at 91 FR 1032, is extended. Comments received on or before March 23, 2026 and rebuttal comments received on or before April 21, 2026, will be considered before an administrative determination is issued by PHMSA's Chief Counsel. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: All documents in this proceeding, including Exxon Mobil Corporation's application and all comments received, may be reviewed in the Docket Operations Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. All documents in this proceeding are also available on the U.S. Government *Regulations.gov* website: <http://www.regulations.gov>.

Comments must refer to Docket No. PHMSA-2025-0777 and may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Operations Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** Docket Operations Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Commenters must send a copy of their comment to the individuals listed below. Commenters must include a certification that a copy of the comment has been sent to these persons:

- Ilana H. Eisenstein, Counsel for Exxon Mobil Corporation, DLA Piper LLP, 1650 Market Street, Suite 5000, Philadelphia, PA 19103.
- The Honorable Bruce J. Kaplan, Civil Presiding Judge, Middlesex County Courthouse, 56 Paterson Street, New Brunswick, NJ 08901.
- Andrew J. Dupont, The Curtis Center, Suite 720 East, 601 Walnut Street, Philadelphia, PA 19106.
- Jeffrey Kluger, McGivney, Kluger, Clark & Intoccia, P.C., 290 W Mt. Pleasant Ave., Suite 4200, Livingston, NJ 07039.

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing a comment submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://www.regulations.gov>.

A subject matter index of hazardous materials preemption cases, including a listing of all inconsistency rulings and preemption determinations, is available through PHMSA's home page at <http://phmsa.dot.gov>. From the home page, click on "Regulations and Compliance," then on "Standards & Rulemaking," then on "Hazardous Materials Standards and Rulemaking," then on "Preemption Determinations" located on the left side of the page. A paper copy of the index will be provided at no cost upon request to Mr. Doyle, at the address and telephone number set forth in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT:

Patrick Doyle, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone No. 202-366-4400; Facsimile No. 202-366-7041.

SUPPLEMENTARY INFORMATION: The Exxon Mobil Corporation (Exxon) has applied for an administrative determination as to whether the Federal hazardous material transportation law (HMTA) preempts certain state common law tort claims against it regarding the marking, employee training, loading and unloading, and hazardous material classification for gasoline transported by cargo tank motor vehicle (CTMV).¹ Exxon's application for a preemption determination originated from common law tort claims brought against it in a New Jersey state court by a former driver whose duties included driving a CTMV and filling it with gasoline at an Exxon facility. The tort claims focus on an assertion that the benzene in gasoline causes an unreasonably high risk of cancer for hazardous materials employees who transport it. The New Jersey state court denied the Defendants' motion for summary judgment on June 24, 2025, in which Exxon claimed the state common law tort claims are preempted by federal law. Exxon now asks PHMSA to consider questions similar to what it presented to the New Jersey state court. PHMSA published a notice of Exxon's application in the

¹ The HMTA is codified at 49 U.S.C. 5101 *et seq.*

Federal Register on January 9, 2026 (91 FR 1032).² On January 30, 2026, the Offices of the Attorneys General of Rhode Island, New Jersey, Connecticut, Delaware, Maine, New York, and Nevada asked for an extension of time in which to file comments.

After review of the Offices of the Attorneys General of Rhode Island, New Jersey, Connecticut, Delaware, Maine, New York, and Nevada's request, we have granted their request.

Issued in Washington, DC, on February 5, 2026.

Keith J. Coyle,
Chief Counsel.

[FR Doc. 2026-02574 Filed 2-9-26; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Retail Foreign Exchange Transactions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, "Retail Foreign Exchange Transactions."

DATES: Comments must be received by April 13, 2026.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* prainfo@occ.treas.gov.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557-0250, 400 7th Street

SW, Suite 3E-218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- *Fax:* (571) 293-4835.

Instructions: You must include "OCC" as the agency name and "1557-0250" in your comment. In general, the OCC will publish comments on www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to www.reginfo.gov. Hover over the "Information Collection Review" tab and click on "Information Collection Review" from the drop-down menu. From the "Currently under Review" drop-down menu, select "Department of the Treasury" and then click "submit." This information collection can be located by searching OMB control number "1557-0250" or "Retail Foreign Exchange Transactions." Upon finding the appropriate information collection, click on the related "ICR Reference Number." On the next screen, select "View Supporting Statement and Other Documents" and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating www.reginfo.gov, please contact the Regulatory Information Service Center at (202) 482-7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649-5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the

OMB for each collection of information that they conduct or sponsor.

"Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements, imposed on ten or more persons, that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 generally 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, the OCC is publishing notice of the renewal of this collection.

Title: Retail Foreign Exchange Transactions.

OMB Control No.: 1557-0250.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: The OCC's rule pertaining to retail foreign exchange transactions ("retail forex") (12 CFR part 48) allows national banks and Federal savings associations to offer or enter into retail foreign exchange transactions. In order to engage in these transactions, institutions must comply with various reporting, disclosure, and recordkeeping requirements included in that rule.

Reporting Requirements

The reporting requirements in 12 CFR 48.4 state that, prior to initiating a retail forex business, a national bank or Federal savings association must provide the OCC with prior notice and obtain a written supervisory no-objection letter. In order to obtain a supervisory no-objection letter, a national bank or Federal savings association must have written policies, procedures, and risk measurement and management systems and controls in place to ensure that retail forex transactions are conducted in a safe and sound manner. The national bank or Federal savings association also must provide other information required by the OCC, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margins.

Disclosure Requirements

Under 12 CFR 48.5, a national bank or Federal savings association must promptly provide the customer with a statement reflecting the financial result of the transactions and the name of any introducing broker to the account. The institution must follow the customer's

² <https://www.federalregister.gov/documents/2026/01/09/2026-00231/hazardous-materials-notice-of-preemption-application-from-exxon-mobil-corporation-and-invitation-for>.

specific instructions on how the offsetting transaction should be applied.

Twelve CFR 48.6 requires that a national bank or Federal savings association furnish a retail forex customer with a written disclosure before opening an account through which the customer will engage in retail forex transactions. It further requires a national bank or Federal savings association to secure an acknowledgment from the customer that the disclosure was received and understood. Finally, the section requires a national bank or Federal savings association to disclose its profitable accounts ratio and its fees and other charges.

Twelve CFR 48.10 requires a national bank or Federal savings association to issue monthly statements to each retail forex customer and send confirmation statements following transactions.

Twelve CFR 48.13(c) prohibits a national bank or Federal savings association engaging in retail forex transactions from knowingly handling the account of any related person of another retail forex counterparty unless it receives proper written authorization, promptly prepares a written record of the order, and transmits to the counterparty copies of all statements and written records. Twelve CFR 48.13(d) prohibits a related person of a national bank or Federal savings association engaging in retail forex transactions from having an account with another retail forex counterparty unless it receives proper written authorization and copies of all statements and written records for such accounts are transmitted to the counterparty.

Twelve CFR 48.15 requires a national bank or Federal savings association to provide a retail forex customer with 30 days prior notice of any assignment of any position or transfer of any account of the retail forex customer. It also requires a national bank or Federal savings association to which retail forex accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and obtain the signed acknowledgments within 60 days.

The customer dispute resolution provisions in 12 CFR 48.16 require certain endorsements, acknowledgments, and signatures. The section also requires that a national bank or Federal savings association, within 10 days after receipt of notice from the retail forex customer that the customer intends to submit a claim to arbitration, provide the customer with a

list of persons qualified in the dispute resolution.

Policies and Procedures; Recordkeeping

Twelve CFR 48.7 and 48.13 require that a national bank or Federal savings association engaging in retail forex transactions keep full, complete, and systematic records and to establish and implement internal rules, procedures, and controls. Section 48.7 also requires that a national bank or Federal savings association keep account, financial ledger, transaction, and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations. Twelve CFR 48.9 requires policies and procedures for haircuts for noncash margin collected under the rule's margin requirements and annual evaluations and modifications of the haircuts.

Estimated Burden

Estimated Frequency of Response: On occasion.

Estimated Number of Respondents: 22.

Estimated Total Annual Burden: 32,880 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Carl Kaminski,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2026-02622 Filed 2-9-26; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

[Docket ID No. TREAS-DO-2026-0034]

Designation of the Social Security Administration's Numerical Identification System (Numident) Into Do Not Pay

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed designation.

SUMMARY: Pursuant to the Payment Integrity Information Act of 2019 (PIIA) (31 U.S.C. 3351 *et seq.*), the U.S. Department of Treasury (Treasury) operates the Do Not Pay Working System—a centralized portal through which agencies can search multiple databases to verify payment or award eligibility. Treasury, under a delegation from the Director of the Office of Management and Budget (OMB), is authorized to designate new databases for inclusion in the Do Not Pay Working System. Treasury is issuing this Notice of Proposed Designation to provide the public an opportunity to comment on the proposed designation of the Social Security Administration's Numerical Identification System (Numident) to the Do Not Pay Working System.

DATES: Submit written comments on or before February 25, 2026. At the conclusion of the comment period, if Treasury decides to finalize the designation, Treasury will publish a notice in the **Federal Register** to officially designate the database.

ADDRESSES: Submit your comments, identified by Docket ID TREAS-DO-2026-0034, online at <https://www.regulations.gov>. Comments can also be mailed to the Department of the Treasury, Office of the Fiscal Assistant Secretary, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attn: DNP Comments. Commenters are encouraged to submit public comments electronically.

Submission of comments in response to this notice is voluntary. Comments may be used to inform decision-making on topics related to this notice. In general, all comments received will be posted without change to www.regulations.gov, including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Office of the Fiscal Assistant Secretary, U.S. Department of the Treasury, Office of the Fiscal Assistant Secretary, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Telephone (202) 622-2000 or Email AmericasBankAccountEO@treasury.gov.

SUPPLEMENTARY INFORMATION: The Do Not Pay Working System is a centralized portal through which agencies can search multiple databases to obtain information about potential federal payees and awardees for the purpose of identifying and preventing improper payments. Pursuant to 31 U.S.C. 3354(b)(2) OMB has delegated authority to the Treasury to designate additional databases to the Do Not Pay Working System when those databases substantially assist in preventing improper payments.

Treasury is issuing this Notice of Proposed Designation to designate Social Security Administration's (SSA) Numerical Identification System (Numident). Numident "contains a record of each person who has applied for and to whom [SSA] [has] assigned [a] [Social Security Number (SSN)]." See System of Records Notice (SORN) 60–0058, Master Files of Social Security Number (SSN) Holders and SSN Applications, 90 FR 50879 (Nov. 12, 2025). Upon designation to the Do Not Pay Working System, Numident will be used solely for the purpose of verifying the name, SSN, and date of birth (DOB) of individuals receiving federally-funded payments or awards under health or income maintenance programs (e.g., Social Security retirement payments, Medicare, and Medicaid). The addition of Numident to the Do Not Pay Working System will strengthen the integrity of Federal funds disbursements in health or income maintenance programs, including in federally-funded state-administered programs.

Do Not Pay Working System Privacy, Security, and Legal Compliance: Treasury considers information security, privacy, records management, public transparency, and supply chain security matters for all resource planning and management activities to ensure certain risks are appropriately managed.

Treasury has primary responsibility for compliance with privacy restrictions and manages risks associated with the use of specific data to reduce improper payments for Do Not Pay users. Fiscal Service maintains a comprehensive privacy program and dedicates specialized privacy resources within the Do Not Pay program to ensure compliance with all applicable statutes, regulations, policies, and privacy requirements guided by the Fair Information Practice Principles and industry best practices governing information systems and data privacy. This includes maintaining ongoing awareness of privacy and security risks and assessing associated controls at a frequency sufficient to ensure compliance and effectively manage

those risks. The Do Not Pay program consults department and bureau leadership and legal counsel regarding the Do Not Pay Working System to employ privacy and security controls through a data governance process.

Treasury complies with Federal Information Security Modernization Act of 2014 requirements and ensures Do Not Pay Working System assets are managed in accordance with federal requirements, policies, and procedures. The Do Not Pay Working System employs security controls for secure system access using Personal Identity Verification credentials, *Login.gov* account management, and ID.ME. Do Not Pay Working System users and administrators are required to sign rules of behavior stipulating their responsibilities to minimize risks associated with the use of specific data.

Designation Overview: OMB has reviewed Treasury's recommendation to designate SSA's Numident to the Do Not Pay Working System. Numident is the authoritative federal source for Social Security Numbers (SSNs). While the full Numident database contains all the information SSA receives on applications for SSNs, the designation to the Do Not Pay Working System will be limited in scope, allowing Do Not Pay users to verify only three data elements associated with a payment or award recipient under a health or income maintenance program—name, SSN, and DOB. This proposed designation supports the reduction of identity-related improper payments, which have exceeded \$31 billion since FY2021. Fiscal Service and SSA each maintain responsibility for the security and lawful handling of the data elements exchanged, ensuring compliance with the Privacy Act and other applicable federal statutes.

Considerations for Designating

1. Statutory or other limitations on the use and sharing of specific data:

Sections 205(a) and 205(c)(2) of the Social Security Act authorizes SSA's maintenance of the Numident database. Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, SSA is permitted to disclose Numident records to the Do Not Pay Working System under Routine Use 17 of SORN 60–0058, Master Files of SSN Holders and SSN Applications 90 FR 50879 (Nov. 12, 2025), which permits the disclosure of Numident data to "Federal, State, or local agencies (or agents on their behalf) for administering income or health maintenance programs."

2. Privacy restrictions and risks associated with specific data:

Fiscal Service conducted a privacy risk assessment for the Numident data source to evaluate potential privacy risks and ensure compliance with applicable legal, regulatory, and policy requirements, including the Privacy Act of 1974, as amended. This assessment examined the risks and effects of using Numident data and evaluated protections and alternative processes to mitigate those risks. The data sharing arrangement between the SSA and the Do Not Pay Working System involves the exchange of personally identifiable information (PII) solely for the purpose of verifying SSNs associated with federal health or income maintenance program payments and awards.

SSA will provide verification services by matching submitted SSNs, names, and DOBs against its authoritative Numident database. Specifically, Do Not Pay users will submit both name and SSN numbers associated with payment or award recipients under health or income maintenance programs, and will also have the option to verify the individual's DOB. In response, SSA's Numident will transmit to the Do Not Pay Working System certain numerical response codes indicating whether one or more of the submitted elements match SSA's Numident file. SSA will not disclose any other Numident data or PII to the Do Not Pay Working System other than the numerical response codes indicating whether the submitted data element matches SSA's Numident records. For example, if a submitted SSN is not verified, Numident will not share the correct SSN with the Do Not Pay Working System. Accordingly, the exchange will be governed by strict data minimization principles: only the data necessary for verification is collected, retained for the shortest duration required, and used exclusively for payment integrity purposes. This method strengthens internal controls, supports federal privacy standards, and limits the exposure of PII.

Transparency and accountability are further reinforced through public notices in the **Federal Register**, privacy impact assessments, and the publication of privacy policies on the Do Not Pay website. While Do Not Pay does not collect information directly from individuals, it relies on the original data source agencies to provide appropriate notice and obtain consent where applicable. These layered controls and oversight mechanisms collectively ensure that the use of SSA data remains lawful, limited in scope, and aligned with federal privacy standards.

3. Likelihood that the data will strengthen program integrity across programs and agencies:

The use of SSA's Numident data for SSN verification has a high likelihood of strengthening program integrity across federal and federally funded state-administered health or income maintenance programs. By enabling precise validation of identity attributes against Numident, agencies can more confidently assess the accuracy of payment records. This capability directly supports pre-award, pre-payment, and payment-stage verification processes, reducing the risk of improper payments and enhancing compliance with statutory and policy requirements. The centralized access to verified identity data also facilitates consistent application of payment integrity controls across disparate programs, improving operational efficiency and reducing fraud. The integration of Numident into the Do Not Pay Working System provides a scalable and secure framework for cross-agency collaboration.

4. Benefits of streamlining access to the data through Do Not Pay:

Streamlining access to SSA's Numident data through the Do Not Pay Working System offers significant operational and compliance benefits for federal agencies. By centralizing identity verification services within an established, secure infrastructure, agencies can reduce duplicative efforts, accelerate pre-award, pre-payment, and payment-stage validations, and improve consistency in applying payment integrity controls. This approach minimizes the need for separate data access arrangements, enabling agencies to leverage verified SSN data without navigating complex interagency agreements or bespoke technical integrations. Do Not Pay estimates that full utilization of Numident could address \$1.5 billion to \$4.5 billion in annual at-risk payments. The result is a more efficient, scalable model for identity validation that supports timely and accurate decision-making across programs.

5. Costs associated with expanding or centralizing access, including modifications needed to system interfaces or other capabilities in order to make data accessible:

Establishing access to the Numident data source will require targeted system modifications to support secure and efficient data integration. SSA, as the federal provider of Numident, imposes specific technical and financial requirements for access, including initial fees to develop secure file transfer mechanisms and direct connections. These infrastructure enhancements are necessary to ensure compatibility with existing systems and

to maintain integrity and confidentiality of data. Treasury proposes to directly compensate SSA for these services, consistent with interagency data-sharing practices. Do Not Pay will also incur internal costs related to system interface modifications, maintenance, and operational support to ensure sustained compliance with federal privacy, security, and data governance standards. These investments are essential to enable scalable, policy-compliant access to Numident data for authorized federal use. Treasury determined that integration costs are minimal and can be absorbed within existing development efforts.

6. Other policy and stakeholder considerations:

This direct integration through the Do Not Pay Working System offers a legally sound and operationally efficient mechanism to conduct identity verification in support of payment integrity. By centralizing access within a secure, policy-compliant infrastructure, agencies can reduce administrative burden, eliminate duplicative data access arrangements, and accelerate pre-award, pre-payment, and payment-stage validations. This approach ensures consistent application of verification protocols across programs, enabling agencies to detect and prevent improper payments with greater speed and precision.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. 2026-02630 Filed 2-9-26; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. Ch. 10, that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet by teleconference on February 17, 2026. The meeting will begin at 11:00 a.m. Eastern Standard Time (EST) and end at 3:00 p.m. EST. All sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War in 1990-91.

On February 17, 2026, the Committee will receive a FACA 101 brief, hear presentations by invited subject matter experts, and discuss next steps for the committee working groups.

This meeting will be available via Webex at the following URL: <https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m59fce0d6c040ab0ea95798bdbe73cb>. Or, join by phone: 1-833-558-0712 Toll-free; meeting access code: 2826 068 7849. Meeting password: GWVets1991!

The meeting will include time reserved for public comments 30 minutes before the meeting closes. As time is limited, individuals wishing to make public comments can contact VARACGWVI@va.gov in advance to reserve time during the public comment period or submit written comments (max. 2-pages). Each public comment speaker will be held to a 3-5-minute time limit as time permits. Individuals wishing to seek additional information should contact Dr. Karen Block, Designated Federal Officer, at Karen.Block@va.gov.

Dated: February 5, 2026.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2026-02568 Filed 2-9-26; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA-2026-VACO-0001]

Notice of Plans To Assess the Current Scientific Literature and Historical Detailed Claims Data Regarding Neurodegenerative Outcomes and Selected Military Environmental Exposures; Annual Sergeant First Class Heath Robinson Honoring Our Promise To Address Comprehensive Toxics (PACT) Act Public Listening Session and Request for Comments

AGENCY: Department of Veterans Affairs.

ACTION: Notice of public comment and listening session.

SUMMARY: The Department of Veterans Affairs (VA) announces its plan to conduct an assessment of the scientific literature and historical claims data regarding the association between military environmental exposure and neurodegenerative outcomes. Pursuant to 38 U.S.C. 1172, the Department of Veterans Affairs (VA) announces its plan to designate a technical working group (TWG) to conduct an assessment and development recommendations to VA leadership for formal assessment,

pursuant to 38 U.S.C. 1172(d), of the findings from National Academies of Sciences, Engineering, and Medicine (NASEM) review of certain neurodegenerative diseases and military environmental exposures once complete. Additionally, VA is soliciting public comments on the importance of completing this assessment of scientific literature and historical claims data for neurodegenerative diseases and will also hold the annual PACT Act public listening session.

DATES:

Public Comments: Comments must be received by April 13, 2026.

Information Session: VA will hold a public listening session virtually via Webex on Thursday, May 14, 2026, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time (EST). The session will focus on the plans detailed in this **Federal Register** notice. Registration is required and further information can be found in the **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: You may submit comments through www.regulations.gov under docket VA-2026-VACO-0001.

Instructions for accessing agency documents, submitting comments, and viewing the docket, are available on www.regulations.gov under "FAQ."

FOR FURTHER INFORMATION CONTACT: Dr. Erin Dursa, Veterans Health Administration, (202) 461-7297.

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 1172, as created by section 202 of the PACT Act of 2022, VA is publishing this notice to inform the public of its plan to assess the findings of NASEM's review of scientific evidence on potential associations between military environmental exposures and neurodegenerative diseases. Neurodegenerative diseases were selected based on continuous monitoring of exposure information from scientific literature, review of media reports, input from veterans, and communications from Congress, in addition to the serious nature of neurodegenerative diseases. Additionally, there is evidence to suggest that certain exposures that are common in the military setting have neurotoxic effects.

Consistent with 38 U.S.C. 1171 through 1176, VA may use NASEM reports or similar scientific literature to conduct scientific assessments and formal evaluations of illnesses and toxic exposures and make determinations regarding presumptions of service connection. NASEM's review is being performed in accordance with 38 U.S.C. 1176, which requires the VA to enter into a 5-year agreement with NASEM to

conduct investigations on military exposures and health outcomes. A committee established by NASEM will conduct a review of scientific and medical evidence regarding possible associations between exposures to certain hazards during military service and neurodegenerative diseases. Upon completion of the NASEM review, VA will evaluate the findings to determine whether initiation of a formal evaluation conducted under 38 U.S.C. 1173 is warranted. Any future formal evaluation(s) would result in a recommendation to the Secretary as to whether to establish new presumptions of service connection for purposes of claims for veterans' benefits based on qualifying periods of service related to exposures.

VA entered the contract with NASEM for this study in 2025, and VA will receive quarterly status updates. The NASEM committee will focus on several neurodegenerative diseases, including Parkinson's disease, Alzheimer's disease, motor neuron diseases such as primary lateral sclerosis, myasthenia gravis, peripheral neuropathy, transverse myelitis, neuromyelitis optica, and inclusion body myositis. The committee will investigate whether those neurodegenerative diseases may result from various exposures to hazards during military service, such as pesticides, jet fuels, solvents, heavy metals, per- and polyfluoroalkyl substances, and fine particulate matter.

VA invites input on the NASEM study and any subsequent VA evaluation of that work through public comments or the virtual listening session. During this listening session, VA subject matter experts will listen to public feedback and may ask questions but will not be able to share proposals for specific conditions nor address the merits of any comment provided.

VA also invites input regarding other health outcomes or exposures that would benefit from review for potential association.

VA continues to review and assess information about military environmental exposure incidents, emerging scientific evidence regarding toxic substances, and health outcomes in deployed and non-deployed veteran cohorts. Additionally, active epidemiological surveillance and ongoing monitoring of military exposures in collaboration with the Department of Defense are underway. If those assessments identify a possible association between military environmental exposure and an adverse health outcome, this may lead to additional research or be subject to a **Federal Register** notice and comment

process, as required by 38 U.S.C. 1172. VA will publish other notices of this type as it reviews other potential adverse health conditions and their possible association with military environmental exposures to provide health care, services, and benefits to veterans.

After reviewing comments received in response to this notice and during the public listening session, VA will publish a response to public comments in the **Federal Register** in accordance with 38 U.S.C. 1172(a)(2)(B). Following publication of NASEM's findings, VA will assess those findings and determine appropriate next steps, which may include developing a recommendation for formal evaluation under 38 U.S.C. 1173, pursuant to 38 U.S.C. 1172(d). If a formal evaluation is commenced, a recommendation with respect to establishing a presumption of service connection must be submitted to the Secretary within 120 days, in accordance with 38 U.S.C. 1173(d). Within 160 days of receiving the recommendation with respect to establishing a presumption of service connection, the Secretary must determine whether a presumption is warranted in accordance with 38 U.S.C. 1174(a). This may include initiating rulemaking to establish new presumptions for some, or all the conditions formally evaluated and/or publishing notice in the **Federal Register** of any determination that a presumption or presumptions are unwarranted for some or all the conditions that were the subject of the evaluation.

Listening Session

While VA will accept public comments through www.regulations.gov, the listening session aims to allow individuals to share their research, input, and comments on certain adverse health conditions associated with military environmental exposures. Participants can also share their recommendations on other conditions that would benefit from review.

Virtual Listening Session on May 14, 2026: Notice of Plans for the Department of Veterans Affairs to Review Evidence from Future NASEM Findings on Neurodegenerative Diseases and Certain Military Service Exposures. *Note:* This listening session will have closed captioning available via the WebEx platform. The webinar will be recorded and transcribed.

Registration Link: <https://public.govdelivery.com/accounts/USVAVEO/signup/48851>.

Registration Information: Individuals interested in attending the listening session must register with Webex. During registration, VA will ask attendees if they want to provide verbal or written feedback, so VA can coordinate enough time for verbal comments. However, verbal participation is not required to complete registration. If you wish to provide verbal or written feedback during the listening session, please register by April 30, 2026, at Noon EST. Individuals who indicate interest in commenting will receive a confirmation message two business days before the session. Individuals who wish to submit materials to VA must do so by April 30, 2026 at Noon EST.

VA will work to accommodate all individuals who wish to comment verbally. However, VA will prioritize those who registered in advance. The time allotted for individuals to comment verbally will depend on the number of registrations. VA will turn off cameras and mute microphones until the presenter's scheduled time to accommodate as many comments as possible. VA will request written submissions if there is not enough time to hear all verbal comments.

Note: During the listening session, VA will not share proposals or address feedback. VA will use suggestions made during the listening session and public comments on VA's plan to improve future evaluations. VA will continue to comply with the requirements of 38 U.S.C. 1172(a) and ensure appropriate public notice and opportunity for participation.

Special Accommodations: Attendees requiring special accommodations should make their requests to VA by contacting the point of contact identified in this notice no later than April 24, 2026, at Noon EST.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on December 10, 2025, and

authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jennifer Williams,

*Alternate Federal Register Liaison Officer,
Department of Veterans Affairs.*

[FR Doc. 2026-02619 Filed 2-9-26; 8:45 am]

BILLING CODE 8301-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0138]

Agency Information Collection Activity Under OMB Review: Request for Details of Expenses

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by March 12, 2026.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select "Currently under Review—Open for Public Comments", then search the list for the information collection by Title or "OMB Control No. 2900-0138."

FOR FURTHER INFORMATION CONTACT:

VA PRA information: Dorothy Glasgow, 202-461-1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Request for Details of Expenses.
OMB Control Number: 2900-0138
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Extension of a currently approved collection.

Abstract: The primary use of the form is to gather the necessary information to determine eligibility for VA Pension. Without VA Form 21P-8049, VA will not be able to properly evaluate the totality of a claimant's circumstances when considering an application for benefits. VA will also be unable to assess the totality of the claimant's circumstances when VA receives evidence of a significant increase in the corpus of the claimant's estate. The collection is conducted on a one-time basis and cannot be performed less frequently.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 90 FR 55243, December 1, 2025.

Affected Public: Individuals or Households.

Estimated Annual Burden: 218 hours.

Estimated Average Burden per

Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 871 per year.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

*Acting, VA PRA Clearance Officer, (Alt.)
Office of Information Technology, Data
Governance Analytics, Department of
Veterans Affairs.*

[FR Doc. 2026-02556 Filed 2-9-26; 8:45 am]

BILLING CODE 8320-01-P



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Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, et al.

Hazardous Materials: Harmonization With International Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 171, 172, 173, 175, 176, 178, and 180****[Docket No. PHMSA–2023–0111 (HM–215R)]****RIN 2137–AF64****Hazardous Materials: Harmonization With International Standards**

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend the Hazardous Materials Regulations to adopt certain international regulations and standards related to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These amendments are intended to maintain consistency with the latest international standards and regulations, and to reduce costs to entities or individuals within the United States or to otherwise lower the cost of regulations on the United States economy.

DATES: Comments must be received by April 13, 2026. To the extent possible, PHMSA will consider late-filed comments while a final rule is developed.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2023–0111 (HM–215R) or RIN 2137–AF64 for this rulemaking at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any

personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Docket: For access to the dockets to read background documents including the Preliminary Regulatory Impact Analysis (PRIA) or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (*see ADDRESSES*).

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response 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. Pursuant to 49 CFR 105.30, you may ask PHMSA to provide confidential treatment to the information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as “Confidential;” (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Steven Andrews, 1200 New Jersey Avenue SE, DOT: PHMSA–PHH–10, Washington, DC 20590–0001. Any comment PHMSA receives that is not explicitly designated as CBI will be placed in the public docket.

FOR FURTHER INFORMATION CONTACT: Candace Casey, Standards and Rulemaking, at 202–366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Executive Summary
- II. Background
- III. Incorporation by Reference Discussion Under 1 CFR Part 51
- IV. Amendments Not Being Proposed for Adoption
- V. Section-by-Section Review of NPRM Proposals
- VI. Regulatory Analyses and Notices
 - A. Legal Authority
 - B. Executive Order 12866; Regulatory Planning and Review

- C. Executive Orders 14192 and 14219
- D. Energy-Related Executive Orders 13211, 14154, and 14156
- E. Executive Order 13132: Federalism
- F. Regulatory Flexibility Act
- G. Unfunded Mandates Reform Act of 1995
- H. National Environmental Policy Act
- I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- J. Privacy Act
- K. Paperwork Reduction Act
- L. Executive Order 13609 and International Trade Analysis
- M. National Technology Transfer and Advancement Act
- N. Cybersecurity and Executive Order 14028
- O. Severability

I. Executive Summary

The Secretary of Transportation is directed by 49 U.S.C. 5120 to ensure that domestic regulations for the transportation of hazardous materials are generally consistent with the latest international standards and requirements, unless such standards or requirements are unnecessary or unsafe, or a more stringent safety standard is in the public interest. Consistent with this statutory requirement, the Pipeline and Hazardous Materials Safety Administration proposes to amend the Hazardous Materials Regulations (HMR) to adopt certain international regulations and standards, including changes to material incorporated by reference, hazardous materials descriptions and proper shipping names (PSN), hazard classes, packing groups (PG), special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.

PHMSA anticipates that the adoption of the amendments proposed in this NPRM will maintain the current levels of safety achieved under the HMR. Harmonizing the HMR with international consensus standards is expected to also reduce delays and interruptions in the transportation of hazardous materials and promote the efficient and free flow of commerce by eliminating unnecessary, outdated, and conflicting regulatory requirements. Overall, the proposed amendments are intended to reduce costs to entities or individuals within the United States or otherwise lower the cost of regulations on the United States economy.

The following list summarizes noteworthy proposals set forth in this NPRM:

- **Incorporation by Reference:** PHMSA proposes to incorporate by reference updated versions of the following international hazardous materials regulations and standards: the 2025–2026 edition of the International

Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions); Amendment 42–24 to the International Maritime Dangerous Goods Code (IMDG Code); the 2023 edition of Transport Canada's Transportation of Dangerous Goods (TDG) Regulations; and the 23rd revised edition of the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations).

- *Amendments to the Hazardous Materials Table:* PHMSA proposes amendments to the Hazardous Materials Table (HMT; § 172.101) to add, to revise, or to remove certain PSNs, hazard classes, PGs, SPs, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits.

- *Increase in authorized amounts of certain gases transported as limited quantities:* For modes other than air transportation, PHMSA proposes to extend the relief provided by the limited quantity provisions to four Division 2.2 (non-flammable and non-poisonous) compressed gases. This amendment would authorize these materials for transport as a limited quantity material in quantities up to 1000 ml (34 fluid ounces) per package, when transported in DOT specification cylinders or UN pressure receptacles. These materials are: “UN1006, Argon,” “UN1013, Carbon dioxide,” “UN1046, Helium,” and “UN1066, Nitrogen.”

- *Amendments to the Organic Peroxides Table:* PHMSA proposes amendments to the organic peroxides table in § 173.225, which lists individual organic peroxide formulations that are authorized for transportation without prior approval. The proposed amendments include the addition of three new formulations: (Dibenzoyl peroxide, 2,5-dimethyl-2,5-di-(tert-butylperoxy) hexane, and methyl ethyl ketone peroxide (with a concentration limit of available oxygen ≤10 percent), that will no longer require prior approval when transported under the conditions outlined in the table, as well as the addition of a new authorized packaging for Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52 percent, stable dispersion, in water.

- *Amendments to provisions for the transport of tetramethylammonium hydroxide:* PHMSA proposes to adopt several changes pertaining to entries for Tetramethylammonium hydroxide (TMAH) to maintain consistency with changes adopted in several international standards in response to new incident and test data showing a toxicity hazard

in addition to the previously identified corrosivity hazard. The proposed amendments include the addition of a new HMT entry for aqueous solutions, and revisions to the hazard classification, proper shipping name, or both, for existing entries of PG II and PG III TMAH solutions (UN1835), reclassification of TMAH solids (UN3423), the addition of two new special provisions, and revised packaging authorizations.

- *New provisions for sodium ion batteries:* PHMSA proposes to add new HMT entries and transport provisions for sodium ion batteries to maintain consistency with changes adopted in the 2025–2026 edition of the ICAO Technical Instructions and the 23rd revised edition of the UN Model Regulations. The new provisions in the international regulations regulate sodium ion batteries in the same way as lithium ion batteries and are intended to address anticipated increases in the use of sodium ion batteries as an alternative to lithium ion batteries.

- *New state-of-charge provisions for certain lithium and sodium ion batteries transported by air:* PHMSA proposes expanding current state-of-charge requirements to certain lithium and sodium ion batteries transported by air. The new provision would limit the amount of stored energy to 30 percent or less of the battery's capacity at the time of transport.

- *Improved Emergency Response Information for Lithium Batteries Transported as “UN3536, Lithium batteries installed in cargo transport unit lithium ion batteries or lithium metal batteries:”* PHMSA proposes to amend Special Provision 389 to require that the emergency response information for UN3536 specifically identify the predominant type of energy storage battery installed in the unit (e.g., lithium ion batteries or lithium metal batteries) and provide information on immediate methods for handling fires. When determining the predominant type of energy storage battery, PHMSA encourages shippers to consider which battery type provides electrical power to external devices or the power grid when units transported under UN3536 are in operation.

- *Exceptions for ammonium nitrate hot concentrated solution:* PHMSA proposes to add specific conditions under which solutions of ammonium nitrate (*hot concentrated solution*) can be transported under the HMT entry “UN2426, Ammonium nitrate” or can qualify for exception from regulation under the HMR. The proposed requirements for solutions of ammonium nitrate to be transported

under UN2426 are based on concentration, water content, combustible material content, chlorine content, pH level, and temperature. These requirements were adopted in the 23rd revised edition of the UN Model Regulations to harmonize transport conditions and requirements multimodally.

- *Exceptions for nitrocellulose membrane filters used in rapid test devices:* PHMSA proposes to add a new special provision with specific packaging requirements for “UN3270, Nitrocellulose membrane filters, with not more than 12.6% nitrogen, by dry mass” to be excepted from regulation. These materials are most notably used in rapid test devices for infectious diseases and as substrates for bioanalytical tests as well as pregnancy tests. PHMSA's proposal would maintain consistency with changes adopted in the 23rd revised edition of the UN Model Regulations to facilitate further the transport of these items.

PHMSA anticipates that the proposals in the NPRM will produce safety benefits from harmonizing domestic and international regulations. PHMSA solicits comment on the need, benefits, and costs of the proposed HMR revisions; impact on safety and the environment; and any other relevant information. PHMSA also solicits comment regarding approaches to reducing the costs of the proposed HMR revisions while maintaining or increasing safety benefits and on any other specific changes (e.g., greater flexibility regarding a particular proposal) that might improve the rulemaking. As further explained in the PRIA, PHMSA expects that the aggregate benefits of the amendments proposed in this NPRM for United States entities or individuals justify their aggregate costs.

II. Background

The Federal Hazardous Materials Transportation Law (49 U.S.C. 5101, *et seq.*) directs PHMSA to participate in international standard-setting forums for the transportation of hazardous materials in commerce and encourages alignment of the HMR with those standards (49 U.S.C. 5120). Harmonization of the HMR with international standards and regulations can reduce the costs and other burdens of complying with multiple or inconsistent safety requirements between nations.

PHMSA actively participates in the development of international standards for the transportation of hazardous materials and promotes the adoption of standards consistent with the HMR. Maintaining consistency between

current international standards and the HMR enhances safety by, among other things: (1) ensuring the HMR are informed by the latest international best practices and lessons learned; (2) improving understanding of, and compliance with, pertinent international requirements; (3) facilitating the flow of hazardous materials in commerce and avoiding risks to the public and the environment from handling and potential releases of hazardous materials due to delays or interruptions in transportation; and (4) enabling consistent emergency response procedures in the event of a hazardous materials incident.

When considering alignment of the HMR with new or amended international standards, PHMSA reviews each standard on its own merit, assesses its overall impact on transportation safety, and analyzes the economic implications associated with its adoption. PHMSA's goal is to harmonize with international standards without diminishing the level of safety currently provided by the HMR or imposing undue burdens on the regulated community.

In 1990, PHMSA's predecessor, the Research and Special Programs Administration (RSPA), comprehensively revised the HMR for greater consistency with the UN Model Regulations.¹ The UN Model Regulations constitute a set of recommendations issued by the United Nations Sub-Committee of Experts (UNSCOE) on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). The UN Model Regulations are amended and updated biennially by the UNSCOE and serve as the basis for national, regional, and international modal regulations, including the ICAO Technical Instructions and IMDG Code. PHMSA routinely updates the HMR to incorporate these biennial amendments.

PHMSA has evaluated the latest biennial updates to the international regulations and consensus standards and proposes to revise the HMR to adopt changes consistent with revisions to the 2025–2026 edition of the ICAO Technical Instructions, the Amendment 42–24 to the IMDG Code, and the 23rd revised edition of the UN Model Regulations, all of which were published by or in effect on January 1, 2025.² PHMSA also proposes to incorporate by reference these revised

international regulations, as well as several new or updated International Organization for Standards (ISO) standards. The regulations incorporated by reference are authorized for use for domestic and international transportation, under specific conditions, in part 171, subpart C of the HMR.

On December 9, 2024, PHMSA issued a notice of enforcement discretion, stating that PHMSA and other Federal agencies that enforce the HMR (*i.e.*, the Federal Railroad Administration (FRA), the Federal Aviation Administration (FAA), the Federal Motor Carrier Safety Administration (FMCSA), and the United States Coast Guard (USCG)) will not take enforcement action against any offeror or carrier who follows the 2025–2026 Edition of the ICAO Technical Instructions and Amendment 42–24 of the IMDG Code when all or part of the transportation is by air with respect to the ICAO Technical Instructions, or all or part of the transportation is by vessel with respect to the IMDG Code, during the pendency of this rulemaking proceeding.³ For transport by rail and highway to, from, or within the United States, PHMSA also stated that these agencies will not take enforcement action against any offeror or carrier who offers or accepts hazardous materials identified and described on a shipping paper, or packages either marked or labeled in accordance with these standards—provided that appropriate emergency response information consistent with 49 CFR part 172, subpart G accompanies the shipment. The December 9, 2024, notice of enforcement discretion remains in effect until withdrawn or otherwise modified.⁴

III. Incorporation by Reference Discussion Under 1 CFR Part 51

The National Technology Transfer and Advancement Act of 1995 (NTTAA; Pub. L. 104–113) directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards whenever possible. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. PHMSA currently

incorporates by reference into the HMR all or parts of numerous standards and specifications published by these bodies, which are otherwise known as standard development organizations (SDOs). In general, SDOs update and revise their published standards every two to five years to reflect modern technology and best technical practices.

The Office of Management and Budget (OMB) issued Circular A–119, *Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities*, to implement Section 12(d) of the NTTAA. This circular provides guidance for Federal agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA. PHMSA is responsible for determining which standards currently referenced in the HMR should be updated, revised, or removed, and which standards should be added to the HMR, under the NTTAA and Circular A–119.

Revisions to materials incorporated by reference in the HMR are handled via the notice-and-comment rulemaking process. PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials during that process. The Office of the Federal Register issued a rulemaking that revised 1 CFR 51.5 to require that an agency detail in the preamble of an NPRM the ways the materials it proposes to incorporate by reference are reasonably available to interested parties, or how the agency worked to make those materials reasonably available to interested parties.⁵ Proposed changes to the material incorporated by reference in the HMR are discussed in detail in the Section 171.7 discussion in “Section V. Section-by-Section Review of NPRM Proposals.”

The standards incorporated by reference in this NPRM are reasonably available to interested parties in several ways. The UN Model Regulations and the United Nations Manual of Tests and Criteria (UN Manual of Tests and Criteria) are free and easily accessible to the public on the internet (links are provided in footnotes as part of the section 171.7 discussion in “Section V. Section-by-Section Review of NPRM Proposals”).⁶ The ICAO Technical

³ PHMSA, *Notice of Enforcement Policy Regarding International Standards* (Dec. 9, 2024), available at: <https://www.phmsa.dot.gov/regulatory-compliance/phmsa-guidance/notice-enforcement-policy-regarding-international-standards>.

⁴ PHMSA notes that items described and packaged for transportation under the respective international standards as UN0514 and UN3559, “Fire Suppressant Dispersing Devices,” must first be approved by the Associate Administrator in accordance with 49 CFR 173.56.

⁵ 79 FR 66278 (Nov. 7, 2014).

⁶ United Nations, *UN Model Regulations 23rd revised edition*, (October 8, 2023), available at: <https://unece.org/transport/dangerous-goods/un-model-regulations-rev-24>; United Nations, *Manual of Tests and Criteria, Eighth revised edition* (November 27, 2023), available at: <https://unece.org/transport/standards/transport/>

¹ 55 FR 52401 (Dec. 21, 1990).

² Amendment 42–24 of the IMDG Code became mandatory on January 1, 2025. Voluntary compliance began on January 1, 2024.

Instructions, the IMDG Code, and all ISO standard references are available for interested parties to purchase, either in print or electronic versions through the organizations' websites. In addition, all standards that PHMSA proposes to incorporate by reference in the NPRM will be available for review, free of charge, at the PHMSA Headquarters, 1200 New Jersey Avenue, SE, Washington, DC 20590 during the comment period. Interested persons may email candace.casey@dot.gov to arrange for this in-person review.

IV. Amendments Not Being Proposed for Adoption

PHMSA has determined that certain elements of updated international regulations and standards should not be adopted into the HMR (49 U.S.C. 5120). PHMSA has also determined that certain transport requirements should be authorized on a case-by-case basis through special permits rather than adopting them for general applicability in the HMR. Additional information about these topics is provided below:

- *Additional regulation for carbon and charcoal*—The International Maritime Organization (IMO), through its Sub-Committee on Carriage of Cargoes and Containers (CCC), adopted more stringent requirements than currently exist in the HMR for the transport of carbon (e.g., activated carbon or carbon derived from animal or vegetable origin) in Amendment 42–24 to the IMDG Code. Most notably, the IMO removed the ability to exclude such carbon materials from classification as a Division 4.2 (spontaneously combustible material), i.e., a self-heating material, by way of testing, and consequently the ability to be transported as unregulated.

Section 173.124 of the HMR currently requires carbon materials such as charcoal that are potentially spontaneously combustible because of self-heating properties to be tested by performing UN Test N.4, “Test method for self-heating substances,” in accordance with the UN Manual of Tests and Criteria (see Section 33.4.3.3) and either classified as a Division 4.2 material or excluded from regulation. This classification or exclusion applies to both bulk and non-bulk (e.g., charcoal packaged for retail sale) quantities of carbon. Materials meeting classification criteria are described as “UN1361, Carbon, animal or vegetable origin” or “UN1362, Carbon, activated”, Division 4.2, and are subject to packaging requirements for bulk and non-bulk

quantities, respectively. See §§ 173.212 and 173.242 for PG II and §§ 173.214 and 173.241 for PG III. In addition, hazardous materials transported under UN1361 and UN1362 are assigned stowage category “A”, meaning that these materials may be stowed “on deck” or “under deck” on a cargo or passenger vessel, and that they must be kept as cool as reasonably practicable and protected from sources of heat. These stowage requirements in the HMR are in alignment with the current requirements under Amendment 42–24 of the IMDG Code. In the absence of safety incidents related to the shipment of these materials, as well as the unlikelihood of unpackaged bulk shipments of carbon materials such as charcoal, PHMSA finds that the current requirements in the HMR provide the appropriate level of safety without imposing unnecessary burdens on transportation.

More specifically, Amendment 42–24 removed Special Provision 925 from the IMDG Code, which previously provided a blanket exception for non-activated carbon blacks of mineral origin, consignments of carbon that passed tests for self-heating substances UN Test N.4, and carbons produced by a steam activation process. Amendment 42–24 also removed packing provision PP12, which previously authorized the use of bags as packaging for materials transported in closed cargo transport units, for “UN1361, Carbon.” In addition, Amendment 42–24 removed Special Provision 223—which was previously applicable to carbon materials assigned to PG III—and permitted substances (except for marine pollutants) covered by the description “UN1361, Carbon, PG III” or “UN1362, Activated carbon, PG III” to be excepted from the IMDG Code when testing showed that the substances did not meet the established defining criteria for any hazard class or division. Amendment 42–24 replaced Special Provisions 925 and 223 with a new Special Provision 978, which specifically prohibits the use of the UN N.4 test to except carbon from the IMDG Code by limiting its application only to carbon produced by pyrolysis of an organic material such as bone, bamboo, coconut shell, jute, or wood. Special Provision 978 also requires additional precautions, such as a 14-day weathering period and periodic monitoring, while the material is stowed during transport. These changes also impacted the stowage requirements for materials transported in bulk containers with the aim of facilitating the dissipation and removal of accumulated

heat generated by large amounts of densely stowed charcoal.

The IMO adopted the changes in Amendment 42–24 of the IMDG Code following incidents caused by spontaneous combustion of unpackaged bulk shipments of charcoal on board several vessels. The IMO concluded that removing Special Provisions 223 and 925 was needed because these special provisions could not be applied properly across all shipments given that charcoal is often manufactured at different remote production sites (charcoal piles) and consignments are often comprised of charcoal from different origins with different properties rather than being manufactured under standardized conditions.

PHMSA is not proposing to incorporate the changes adopted in Amendment 42–24 of the IMDG Code. While largely aimed at addressing fires associated with the movement of unpackaged bulk shipments of charcoal, the current IMDG Code requirements also apply to smaller packages of charcoal, such as those available for commercial retail use (i.e., charcoal used for grilling). PHMSA believes that adopting these IMO requirements would unnecessarily burden manufacturers with new testing, handling, and packaging requirements for consumer products, particularly given the lack of domestic incidents and unlikelihood that unpackaged bulk shipments of carbon materials are being transported to and from the U.S.

PHMSA also disagrees with the IMDG Code prohibition on the use of UN Test N.4 to classify or exclude self-heating materials. PHMSA is not aware of any safety concerns or domestic safety incidents that justify the prohibition of the use of this test and believes that harmonizing the HMR with these particular sections of the IMDG Code would impose undue burdens for packaging and handling of carbon material without producing a corresponding safety benefit. Because shipments packaged in accordance with the IMDG Code are authorized for transport in the United States under § 171.22, PHMSA does not anticipate any commercial or economic hardships will result from failing to adopt these requirements.

- *Marking and labeling for battery powered vehicles*—The 23rd revised edition of the UN Model Regulations and Amendment 42–24 of the IMDG Code adopted a new special provision, Special Provision 405, for battery powered vehicles (“UN3556, Vehicle, lithium ion battery powered,” “UN3557, Vehicle, lithium metal battery

powered,” and “UN3558, Vehicle, sodium ion battery powered”). Special Provision 405 provides an exception for battery powered vehicles from marking and labeling requirements when not fully enclosed by packagings, crates, or other means that prevent ready identification, thereby requiring marking and labeling when fully enclosed by packaging, crates, or other means that prevent ready identification. Special Provision 405 is similar to an existing Special Provision A87 in the ICAO Technical Instructions. Special Provision A87 applies to articles but was assigned to battery powered vehicles in the 2024–2025 edition.

PHMSA is not proposing to adopt Special Provision 405 due to concerns raised in various international working groups regarding the necessity of the additional marking and labeling requirements. PHMSA believes that these requirements, which would require new marks and labels on a wide variety of popular consumer goods—e.g., lawn mowers, scooters, motorcycles, wheelchairs—should be subject to further evaluation. PHMSA seeks comments regarding the potential benefits of additional hazard communication requirements for battery powered vehicles transported in fully enclosed packagings.

- **Non-removable specification markings**—The 23rd revised edition of the UN Model Regulations and the 2025–2026 ICAO Technical Instructions states that UN specification markings must be placed on a non-removable component of the packaging. A transitional exception allows packagings to continue to be marked as required prior to the adoption of the new requirement until December 31, 2026, and for any packagings marked in such manner prior to January 1, 2027, to be permitted for continued use. PHMSA anticipates determining that the transitional exception is unnecessary as the HMR already includes such a requirement in § 178.3(a), which states that packagings manufactured to a DOT specification or a UN standard must be marked with the proper specification marking on a non-removable component of the packaging. However, PHMSA seeks comments regarding the potential need for a similar transitional exception. Note that section 178.503(a) also applies the same requirement in § 178.3(a) to the marking of performance-oriented packagings.⁷

V. Section-by-Section Review of NPRM Proposals

The following is a section-by-section review of proposed amendments to harmonize the HMR with international regulations and standards.

Part 171

Section 171.6

Section 171.6 of the HMR provides information on the OMB control numbers assigned to information collections under the Paperwork Reduction Act of 1995. The paragraph (b)(2) table lists the HMR sections associated with each OMB control number. As this NPRM proposes to add new information collection requirements to HMR, PHMSA proposes to revise this table to include the section references where this new information collection request is specified. See paragraph (K), under the “Regulatory Analyses Notices” section for additional details regarding new information collection requests.

Section 171.7

Section 171.7 provides a listing of all consensus standards and regulations incorporated by reference into the HMR. PHMSA is proposing to add or revise the following references in § 171.7 in this NPRM:⁸

- The 2023 edition of the American National Standards Institute (ANSI) N14.1–2023, Nuclear Materials—Uranium Hexafluoride—Packagings for Transport in paragraph (d)(8), which is currently referenced in § 173.420. This standard provides criteria for packagings used for transport of uranium hexafluoride (UF₆). It includes specific information on design and fabrication requirements for the procurement of new packagings intended for the transportation of UF₆ in quantities of 0.2205 lb. (0.1 kg) or more. It also defines the requirements for in-service inspections, cleanliness, and maintenance for packagings in service. Packagings currently in service and not specifically defined in this standard will continue to be authorized for use, provided they are used within their original design limitations, and are inspected, tested, and maintained to comply with the intent of this standard. This standard also includes requirements for cylinder loading, shipping, and valves, plugs, and valve protectors. PHMSA evaluated this updated standard and believes that the revisions provide an enhanced level of

safety without imposing significant compliance burdens. This standard has a well-established and documented safety history, and the adoption of the 2023 edition is expected to maintain the safety standard currently achieved under the HMR. The 2023 edition of ANSI N14.1 is available for purchase on the ANSI website at: <https://webstore.ansi.org/standards/pcc/ansin142023?source=blog>.

- The 2025–2026 edition of the ICAO Technical Instructions in paragraph (t)(1) to replace the 2023–2024 edition, which is currently referenced in §§ 171.8; 171.22–24; 172.101; 172.202; 172.401; 172.407; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10; 175.33; and 178.3. The ICAO Technical Instructions specify detailed instructions and requirements for the international safe transport of dangerous goods (i.e., hazardous materials) by air. The 2025–2026 edition has been amended to align with the 23rd revised edition of the UN Model Regulations. Notable changes include new packing and stowage provisions, new and revised entries on its Dangerous Goods List, and editorial corrections. The 2025–2026 edition of the ICAO Technical Instructions is available for purchase on the ICAO website at <https://store.icao.int/en/shop-by-areas/safety/dangerous-goods>.

- The 2024 edition of the IMDG Code (Amendment 42–24) in paragraph (v)(2) to replace Incorporating Amendment 41–22, which is currently referenced in §§ 171.22; 171.23; 171.25; 172.101; 172.202; 172.203; 172.401; 172.407; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 176.906; 178.3; and 178.274. The IMDG Code is a unified international code that outlines standards and requirements for the transport of dangerous goods (i.e., hazardous materials) by sea (i.e., by vessel). Notable changes in Amendment 42–24 of the IMDG Code include new packing and stowage provisions, new and revised entries on its Dangerous Goods List, and editorial corrections. Distributors of the IMDG Code can be found on the IMO website at: www.imo.org/en/publications/Pages/Distributors-default.aspx.

- The following ISO documents to add new and updated standards for the specification, design, construction, testing, and use of gas cylinders in paragraph (w):

—ISO 535:2014, *Paper and board—Determination of water absorptiveness—Cobb method* in paragraph (w)(1). PHMSA proposes to

⁸ All other standards that are set out as part of the regulatory text of § 171.7(w) were previously approved for incorporation by reference and no changes are proposed.

⁷ This requirement was added in rulemaking HM–218. 65 FR 50450 (Aug. 18, 2000).

remove the 1991 version of this document, ISO 535:1991, which is currently referenced in §§ 178.707, 178.708, and 178.516, and to incorporate by reference the 2014 edition, ISO 535:2014 in its place. ISO 535:2014 specifies a method of determining the water absorptiveness of sized paper and board, including corrugated fiberboard, under standard conditions. This revised version contains changes to the introduction, annexes, and bibliography. The 23rd revised edition of the UN Model Regulations replaced the second edition with the third edition, and PHMSA proposes to mirror these changes for consistency. Replacing the 1991 version will allow references to updated annexed information and bibliographies, as well as for harmonization with other international standards, such as the 23rd revised edition of the UN Model Regulations, in which references to ISO 535:1991 have also been removed.

—*ISO 9809-4:2021, Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 4: Stainless steel cylinders with an R m value of less than 1 100 MPa* in paragraph (w)(40). PHMSA proposes to incorporate by reference the second edition of this document, 9809-4:2021, and phase out the usage of the first edition, 9809-4:2014, by adding a sunset date of December 31, 2028.⁹ These documents are to be referenced in §§ 178.71 and 178.75. ISO 9809-4:2021 specifies the minimum requirements for the materials, design, construction and workmanship, manufacturing processes, examinations and testing at time of manufacture for refillable, seamless, stainless steel gas cylinders with water capacities up to and including 150 L (i.e., ~40 gal.). As part of its regular periodic review process, ISO updated 9809-4:2014 and published the second edition, 9809-4:2021. The second edition includes changes to the requirements for inspection and testing, clarifications of drawings of the cylindrical parts of shells in Figure 3, and the addition of a new provision pertaining to shear stress calculations.

—*ISO 11114-1:2020, Gas cylinders—Compatibility of cylinder and valve materials with gas contents Part 1: Metallic materials* in paragraph

(w)(51). PHMSA proposes to remove the second edition of this document, ISO 11114-1:2012, and the 2017 supplemental amendment, ISO 11114-1:2012/Amd 1:2017, currently residing in paragraphs (w)(50) and (w)(51), respectively, and referenced in §§ 172.102, 173.301b, and 178.71, and to replace these references with the updated third edition, ISO 11114-1:2020. This document provides requirements for the selection of safe combinations of metallic cylinder and valve materials and cylinder gas contents. This revised third edition includes all changes that were added in ISO 11114-1:2012/Amd.1:2017, clarification of the definition of the term “dry,” clarification in the table of compatibility, and various editorial improvements including updated references to incorporate Amendment 1.

—*ISO 11114-2:2021, Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials* in paragraph (w)(52). PHMSA proposes to remove the second edition of this document, ISO 11114-2:2013, which is currently referenced in §§ 173.301b and 178.71, and replace that reference with the third edition, published in 2021. This document provides instruction on the selection and evaluation of compatibility between non-metallic materials for gas cylinders and valves and gas contents. It also applies to tubes, pressure drums, and bundles of cylinders. The third edition has been technically revised to include an update to Table 1 to include new non-metallic materials, and a new Table 2, which addresses non-metallic lining materials for gas cylinders.

—*ISO 11119-1:2020, Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l* in paragraph (w)(62). PHMSA proposes to incorporate by reference the third edition of this document in §§ 178.75 and 178.71. The second edition, ISO 11119-1:2012, is currently referenced in these sections. PHMSA proposes to add a sunset date of December 31, 2028, on the use of the second edition. This document is Part 1 in a three-part series. Part 1 specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for certain Type 2 composite hoop wrapped gas cylinders or tubes intended for the storage and conveyance of

compressed or liquefied gases, as well as cylinders and tubes with composite reinforcement of carbon fiber, aramid fiber or glass fiber (or a mixture thereof) within a matrix of steel wire with a minimum design life of 15 years. The most significant changes in the revised edition of Part 1 include: updates and corrections to references throughout the document; the addition of minimum fiber stress ratios; changes to the fire resistance test procedure; and newly added criteria for tubes above 150 L.

—*ISO 11119-2:2020, Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners* in paragraph (w)(66). PHMSA proposes to incorporate by reference the third edition of this document in §§ 178.75 and 178.71. The second edition and a required supplemental amendment, 11119-2:2012/Amd.1:2014, are currently referenced in these sections. PHMSA proposes to add a sunset date of December 31, 2028, on the use of these two documents, and to incorporate by reference the third edition, ISO 11119-2:2020. This document is Part 2 in a three-part series. Part 2 specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for Type 3 fully wrapped cylinders or tubes with a load-sharing metal liner and composite reinforcement on both the cylindrical portion and the dome ends. The most significant changes in the third edition of Part 2 include: updated references; the addition of minimum fiber stress ratios; the addition of a new alternative for the drop test for certain cylinders; the addition of an alternative impact test for tubes 150 L or more; changes to fire resistance test procedure to make the test more consistent; and changes to the torque test.

—*ISO 11119-3:2020, Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners or without liners* in paragraph (w)(69). PHMSA proposes to incorporate by reference the third edition of this document in §§ 178.71 and 178.75. The second edition, 11119-3:2013, is currently referenced in these sections. PHMSA also proposes to add a sunset date of December 31, 2028, on the use

⁹ The sunset dates proposed for adoption in this NPRM are consistent with the phaseout date adopted in the 23rd revised edition of UN Model Regulations.

of the second edition. ISO 11119–3:2020 specifies requirements for composite gas cylinders up to 150 L water capacity and composite tubes above 150 L water capacity and up to 450 L water capacity, for the storage and conveyance of compressed or liquefied gases. This document is Part 3 in a three-part series. Part 3 specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for Type 4 composite fully wrapped cylinders or tubes with a non-load sharing liner and composite reinforcement on both the cylindrical portion and the dome ends, and Type 5 fully wrapped cylinders or tubes without liners and with a test pressure of less than 60 bar, with water capacities up to 450 L. This document is intended for cylinders used for the storage and conveyance of compressed or liquefied gases; cylinders and tubes with composite reinforcement of carbon fiber, aramid fiber or glass fiber (or a mixture thereof) within a matrix; and for cylinders or tubes with a minimum design life of 15 years. The most significant changes in the third edition of part 3 include: the addition of a new alternative for the drop test for cylinders up to and including 50 L water capacity with dedicated compressed gas service; the addition of alternative impact test for tubes 150 L or more; changes to the fire resistance test procedure to make the test more consistent and the addition of a criterion for tubes above 150 L; changes to the torque test; and a new procedure for the pneumatic cycle test. ISO revised the 2020 editions of ISO 11119 Parts 1, 2, and 3 following comments received from regulators, manufacturers, and users of the standards worldwide. These changes were made to improve and to clarify test procedures, particularly in relation to large composite cylinders and tubes.

—ISO 15105–1:2007, *Plastics—Film and sheeting—Determination of gas-transmission rate Part 1: Differential-pressure methods* in paragraph (w)(82). PHMSA proposes to reference this document in Special Provision 43 in § 172.102 as a part of a condition for exception from the HMR for nitrocellulose membrane filters. This document specifies two methods for determining the gas transmission rate of single-layer plastic film or sheet and multi-layer structures under a differential pressure.

—ISO 16148:2016/Amd 1:2020, *Gas cylinders—Refillable seamless steel*

gas cylinders and tubes—Acoustic emission examination (AT) and follow-up ultrasonic examination (UT) for periodic inspection and testing—Amendment 1 in paragraph (w)(86). PHMSA proposes to incorporate by reference Amendment 1 of ISO 16148 into § 180.207 to supplement ISO 16148:2016. Amendment 1 is a short two-page supplemental correction for ISO 16148:2016, which gives procedures for the use of acoustic emission examination and follow-up ultrasonic examination during the periodic inspection and testing of seamless steel cylinders and tubes used for compressed and liquefied gases with a water capacity of up to 3,000 L. The use of this supplemental amendment would be required as this document includes a significant correction of Note 2 to Figure A.1 concerning the calculation of the depth of the notches used for calibration. PHMSA expects that the additional requirement to use this supplemental amendment will improve safety by requiring the use of improved engineering standards.

—ISO 23826:2021, *Gas cylinders—Ball valves—Specification and testing* in paragraph (w)(97). PHMSA proposes to incorporate by reference the first edition of this document into §§ 178.301b and 178.71. ISO 23826:2021 is a new standard specifying the design, type testing, marking, manufacturing tests and examination requirements for ball valves used as closures of refillable transportable gas cylinders, pressure drums, and tubes; main valves for cylinder bundles and valves for cargo transport units and multiple element gas containers (MEGCs) that convey compressed gases, liquefied gases, and dissolved gases. The new document fills an important gap as ball valves are explicitly excluded in other closure standards such as ISO 10297, *Gas cylinders—Refillable gas cylinder valves—Specification and type testing*. PHMSA expects that the addition of this reference document will facilitate the manufacture, design, and testing of various packagings used for the transport of hazardous materials.

All ISO standards can be found at: www.iso.org/standards.html.

• The 2023 Edition of Transport Canada's Transportation of Dangerous Goods (TDG) Regulations in paragraph (bb)(1), to replace the 2017 edition, which is currently referenced in §§ 107.801; 107.805; 171.12; 171.22; 171.23; 172.401; 172.407; 172.502; 172.519; 172.602; 173.31; 173.32;

173.33; 173.301; 180.205; 180.211; 180.212; and 180.413. Like the HMR, the TDG regulations provide requirements for transportation of hazardous materials goods and activities relating to road, rail, air, and marine transport into, from, and within Canada. This paragraph lists 22 Statutory Orders and Regulations (SORs), which have since been consolidated into one point of reference, SOR/2001–286. PHMSA also proposes to remove references to these 22 SORs and only reference SOR/2001–286 for all of Transport Canada's TDG regulations. Transport Canada's TDG regulations are available online at: <https://laws-lois.justice.gc.ca/eng/regulations/sor-2001-286/>.

• The 23rd Revised Edition (2023) of the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations), Volumes I and II, in paragraph (dd)(1), to replace the 22nd revised edition (2021), which are referenced in §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 172.519; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274. The UN Model Regulations present a basic scheme of provisions that allow uniform development of national and international regulations governing the various modes of transport. Amendments adopted in the 23rd revised edition of the UN Model Regulations include new UN numbers and provisions regulating the transport of sodium ion batteries, fire suppressant dispersing devices, disilane, gallium contained in articles, and trifluoromethyl tetrazole-sodium salt in acetone; a new special provision to increase the authorized volume for transport in limited quantities of some compressed gases of Division 2.2 without subsidiary hazards; more specific concentration limits for ammonium nitrate hot concentrated solutions; exceptions for nitrocellulose membrane filters; and an update to the requirements for the use of recycled plastics in packagings. The 23rd revised edition of the UN Model Regulations is available online at: <https://unece.org/transport/dangerous-goods/un-model-regulations-rev-23>.

• The 8th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, in paragraph (dd)(2), to replace the 7th Revised Edition, which is currently referenced in §§ 171.24, 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.185; 173.220; 173.221; 173.224; 173.225; 173.232; 173, appendix H; 175.10; 176.905; and

178.274. PHMSA also proposes to add a new reference to this document in § 173.169 in reference to the performance of test series 6(c) for fire suppressant dispersing devices. The UN Manual of Tests and Criteria contains standards, test methods, and procedures to be used for the classification of hazardous materials according to the UN Model Regulations. Amendments adopted in this eighth revised edition include: the addition of organic peroxides and polymerizing substances to the list of substances that should not be tested in the self-heating test to avoid false positives; a recommendation to use close-cup tests over open-cup tests for determining flash points; new provisions for the testing of sodium ion batteries; amendments to the classification of desensitized explosives according to the Globally Harmonized System of Classification and Labelling of Chemicals. The eighth revised edition of the UN Manual of Tests and Criteria is available online at: <https://unece.org/transport/standards/transport/dangerous-goods/un-manual-tests-and-criteria-rev8-2023>.

- The 10th Revised Edition of the Globally Harmonized System of Classification and Labelling of Chemicals (GHS), in paragraph (dd)(3), to replace the 9th Revised Edition, which currently is referenced in § 172.401. The GHS is an international system standardizing hazard classification and communication. The HMR authorizes its use for labeling of packages. This revised edition contains updates addressing, among other items, further rationalization of precautionary statements to improve user comprehensibility while considering usability for labelling practitioners. PHMSA notes that the classification procedures for desensitized explosives that were added in this edition of the GHS are not related to transport classification and do not represent a requirement or criteria for obtaining an approval under the HMR. The 10th revised edition of the GHS is available online at: <https://unece.org/transport/dangerous-goods/ghs-rev10-2023>.

- The 2025 edition of the Agreement concerning the International Carriage of Dangerous Goods by Road (ADR 2025), in paragraph (dd)(4), to replace the 2021 edition of the ADR (ADR 2021), which is referenced in §§ 171.8 and 171.23. The ADR outlines regulations concerning the international carriage of dangerous goods by road within the European Union (EU) and other countries that are party to the agreement. The HMR authorizes its use regarding the definition of a liquid material and transport of pi marked

cylinders. This revised edition contains the amendments adopted in 2024 by the Working Party on the Transport of Dangerous Goods. ADR 2025 is available online at: <https://unece.org/adr-2025-files>.

Section 171.8

Section 171.8 defines terms used throughout the HMR. PHMSA proposes to add a new definition, as adopted in the 23rd revised edition of the UN Model regulations, to this section for “sodium ion cell or battery” similar to lithium ion cell or battery. PHMSA expects that adding this definition will provide clarity and enhance safety, primarily by specifying which sodium ion battery types will be subject to the newly proposed provisions in this NPRM applicable to sodium ion batteries.

Section 171.23

Section 171.23 provides conditions and requirements for shipments of certain packages or materials offered for transportation or transported in the United States under the ICAO Technical Instructions, the IMDG Code, the Transport Canada TDG Regulations, or the International Atomic Energy Agency (IAEA) Regulations—as applicable. PHMSA proposes to amend paragraph (b)(5), which specifies conditions and requirements for certain materials, by adding conditions and requirements for fire suppressant dispersing devices. This amendment would be consistent with proposed changes that add new HMT entries “UN0514, Fire suppressant dispersing devices, 1.4S” and “UN3559, Fire suppressant dispersing devices, 9,” which add a new classification and packaging section and revise the explosives packaging section. Detailed summaries of these proposed changes are found in the discussions of Sections 172.101, 173.62, and 173.169 of the Section-by-Section Review.

Specifically, for this section, PHMSA proposes that prior to being transported under authorized international standards and regulations, the Associate Administrator must approve fire suppressant dispersing devices in accordance with §§ 173.56 and (new) 173.169 of the HMR. PHMSA also proposes to reorganize paragraph (b) so that the subject of each provision appears in alphabetical order. This proposed change is necessary to maintain oversight through the explosives approval process, which will allow PHMSA to ensure safe transportation under the new HMT entries and in accordance with the classification, packaging, and conditional exceptions from movement

of these devices domestically and globally. Devices approved in accordance with an international competent authority may rely on that documentation for processing an explosives approval application in the United States.

Part 172

Section 172.101 Hazardous Materials Table (HMT)

The HMT summarizes terms and conditions governing the transportation of listed hazardous materials under the HMR. For each entry, the HMT identifies basic information such as the PSN, UN identification number, and hazard class and hazard label. The HMT specifies additional information or reference requirements in the HMR, such as hazard communication, assigned special provisions, packaging reference citations, and modal requirements, like quantity limits aboard aircraft, and vessel stowage restriction of hazardous materials aboard vessels. PHMSA proposes several changes to the HMT as discussed below. For purposes of the Government Publishing Office’s typesetting procedures, proposed changes to the HMT appear under three sections of the HMT: “remove,” “add,” and “revise.” Certain entries in the HMT, such as those with revisions to the PSNs, appear as a “remove” and “add.” Proposed amendments to the HMT include the following:

New HMT Entries and Revisions to the Appendix B to § 172.101—List of Marine Pollutants

Fire Suppressant Dispersing Devices (UN0514 and UN3559)

PHMSA proposes to add two new entries to the HMT for fire suppressant dispersing devices to identify better these articles for purposes of classification, packaging, and handling for transportation. See the Section-by-Section discussion of Section 173.169 for a detailed discussion of fire suppressant dispersing devices and proposed requirements for their classification, handling, and transportation. The proposed new entries are “UN0514, Fire suppressant dispersing devices, 1.4S” and “UN3559, Fire suppressant dispersing devices, 9.” Fire suppressant dispersing devices are articles containing a pyrotechnic substance that disperse a fire extinguishing agent (or generate an aerosol) when activated, and do not contain any other hazardous materials. To address the prevalence of these articles, the UNSCOE created two new UN ID numbers and added entries to the

Dangerous Goods List (DGL) in the 23rd revised edition of the UN Model Regulations. PHMSA agrees that the addition of these two new entries to the HMT will provide a description that is more appropriate than “UN3268, Safety devices, *electrically initiated*,” and expects that the accompanying classification, packaging, and handling provisions will provide more consistency and for a safe method of transporting these articles.

Tetramethylammonium Hydroxide (UN1835, UN3423, UN3560)

PHMSA proposes several changes pertaining to tetramethylammonium hydroxide (TMAH) to align with the 23rd revised edition UN Model Regulations. TMAH is a quaternary ammonium compound used in the chemical industry in its solid form and as an aqueous solution. TMAH solutions are currently transported under “UN1835, Tetramethylammonium hydroxide solution,” as PG II or PG III, with TMAH solids being transported under “UN3423, Tetramethylammonium hydroxide, solid,” as a PG II. These materials are all classified as Class 8 (corrosive) material and assigned either PG II or PG III using the criteria in § 173.137 of the HMR. However, literature studies of incidents involving accidental human exposure shows that TMAH presents a toxicity hazard in addition to the currently identified corrosivity hazard.¹⁰ The studies indicate that TMAH can cause systemic neurotoxic effects leading to respiratory failure and cardiac arrest in addition to chemical burns in the event of bodily exposure. The studies showed that fatalities occurred from exposure to 25 percent TMAH solution. Furthermore, acute dermal toxicity studies indicated increasing toxic properties as concentration of TMAH solutions increased. Consequently, the UNSCOE determined that there was a need for a revised classification for TMAH materials to account for toxic properties.

The proposed amendments include the addition of a new entry describing a TMAH aqueous solution of at least 25 percent TMAH—“UN3560, Tetramethylammonium hydroxide aqueous solution *with not less than 25 percent tetramethylammonium hydroxide*” in the HMT. This new entry would have a primary hazard of Division 6.1 (toxic), a subsidiary hazard

of Class 8 (corrosive), and be assigned to PG I. Consistent with this new table entry for 25 percent TMAH aqueous solutions, additional changes are proposed for existing TMAH HMT entries to further account for the toxicity hazard and clarify their use, including revisions to the proper shipping names and descriptions, the hazard classification of PG II TMAH solutions (UN1835) reclassification of TMAH solids (UN3423) and revised packaging authorizations, and the assignment of two new special provisions (*i.e.*, 408 and 409).

PHMSA proposes revisions to the TMAH solution (UN1835) shipping description to aid shippers with selecting the most appropriate hazardous materials description and to delineate clearly the classification and PG assignment. For the PSN “Tetramethylammonium hydroxide solution,” the term “aqueous” is added to clarify that the PSN applies to aqueous solutions of TMAH. See the Section-by-Section Review discussion of Section 172.102, Special Provision 408, for further context. Furthermore, concentration ranges corresponding to the assigned PG are added in italics to be used in addition to the PSN. Specifically, the revised hazardous materials description for the PG II entry would read “Tetramethylammonium hydroxide aqueous solution *with more than 2.5 percent but less than 25 percent tetramethylammonium hydroxide*,” and the PG III entry would read “Tetramethylammonium hydroxide aqueous solution *with not more than 2.5 percent tetramethylammonium hydroxide*.”

With respect to the revised classification for TMAH solution (UN1835), PHMSA proposes to add a Division 6.1 subsidiary hazard for the PG II entry—*i.e.*, TMAH aqueous solutions containing more than 2.5 percent but less than 25 percent TMAH. This amendment addresses the data from human exposure incidents and toxicity studies that demonstrated an increasing toxicity property for TMAH solutions as concentration increased.

Similarly, for TMAH, solid (UN3423), which is currently classified as Class 8, PG II, the UNSCOE reclassified as a primary hazard of Division 6.1, a subsidiary hazard of Class 8, and assigned PG I. PHMSA agrees with this reclassification based on human experience and acute toxicity studies. PHMSA concurs with this determination due to the reclassification of the material to a PG I material. Therefore, PHMSA proposes to change the primary hazard from Class 8 to Division 6.1 in column (3) of the HMT

and transition the Class 8 corrosivity hazard to a subsidiary hazard as designated in column (6) of the HMT. In addition, with this hazard reclassification, the PG for UN3423 would be changed from PG II to PG I. PHMSA also notes that in the latest revisions to the DGL in the UN Model Regulations, the limited quantity exception authorization for this entry was removed.

Lastly, PHMSA proposes to assign two new special provisions—Special Provisions 408 and SP 409—to these entries. Special Provision 408 would provide additional hazard communication instructions for certain mixtures containing TMAH and would be assigned to all three TMAH solution entries, stating that the use of those proper shipping names is limited to aqueous solutions comprised of water, tetramethylammonium hydroxide, and no more than one (1) percent of other constituents. This new special provision would also provide instruction that other formulations containing more than one percent surfactants and certain concentration ranges of TMAH (≥8.75 percent or, >2.38 to <8.75 percent, respectively) must be described using “UN 2927, Toxic liquid, corrosive, organic, n.o.s.,” while other formulations not meeting the criteria in the SP 408 must be assigned to an alternative appropriate generic or n.o.s. HMT entry.¹¹ PHMSA expects that providing instruction on the appropriate use of TMAH aqueous solution descriptions and generic or n.o.s. HMT entries for formulations other than aqueous solutions that contain TMAH would make things clearer for shippers of TMAH mixtures with regard to appropriate hazard communication and associated packaging requirements. PHMSA also proposes to assign new Special Provision 409 to all three TMAH solution entries and the TMAH solid entry to allow shipment using the current hazard communication through December 31, 2026, to allow time for offerors to adjust their hazard communication (see the Section-by-Section Review in Section 172.102 for additional information). PHMSA expects these hazard classification and communication changes will enhance safety by providing more appropriate packaging and transport requirements and more accurate hazard information for handlers of TMAH packages and emergency responders.

¹¹ For clarity, n.o.s. means not otherwise specified (in the HMT).

¹⁰ United Nations Economic Commission for Europe (UNECE), *Additional data on proposal ST/SG/AC.10/C.3/2022/24—Revision of classification of tetramethylammonium hydroxide* (June 16, 2022), available at: https://unece.org/sites/default/files/2022-06/UN-SCETDG-60-INF22.e_0.pdf.

Sodium Ion Batteries With Organic Electrolyte and Sodium Ion Batteries Contained in Equipment With Organic Electrolyte/Sodium Ion Batteries Packed With Equipment, With Organic Electrolyte (UN3551 and UN3552)

PHMSA proposes to add three new entries for sodium ion batteries to the HMT: “UN3551, Sodium ion batteries *with organic electrolyte*,” “UN3552, Sodium ion batteries contained in equipment, *with organic electrolyte*,” and “UN3552, Sodium ion batteries packed with equipment, *with organic electrolyte*.” These all describe materials of Class 9. The UN Model Regulations have recently adopted provisions regulating sodium ion cells and batteries in much the same way as lithium ion cells and batteries. Sodium ion technology has the potential to be a low-cost alternative to lithium ion batteries in certain applications. Both sodium ion batteries and lithium ion batteries are rechargeable energy storage devices, with sodium ion batteries using sodium ions to carry a charge and lithium ion batteries using lithium ions to carry a charge. Both present similar hazards due to their energy density. A key operational difference between sodium ion and lithium ion technology is that sodium ion technology can be discharged to zero volts (*i.e.*, a zero state-of-charge) without affecting the performance of the battery. Batteries using sodium ion technology can therefore be stored and transported in a completely discharged state, with terminals shorted if required, greatly reducing their hazard. However, PHMSA and the UNSCOE agree that the same requirements that apply to lithium ion batteries are appropriate for sodium ion batteries given that the two demonstrate similar risks.

Like previous versions of the UN Model Regulations, the HMR does not currently have a hazardous material description for sodium ion batteries. The current entry in the HMT of “Batteries, containing sodium” (UN3292) is applicable to various cell chemistries, such as sodium sulfur and sodium metal chloride which contain metallic sodium, but does not specifically address batteries of sodium ion cell chemistry. When evaluating the proposed adoption of requirements for sodium ion batteries, the UNSCOE analyzed the quantity and nature of gases emitted during the thermal runaway of sodium ion batteries from tests conducted at the French National Institute for Industrial Environment and

Risks.¹² Results showed similarities between the quantity and nature of the gases emitted during the thermal runaway of sodium ion batteries and during the thermal runaway of certain types of lithium ion battery chemistries.

With the results of these tests, along with information indicating that by 2023 companies were planning to mass produce sodium ion batteries to alleviate supply chain issues with lithium ion batteries, the UNSCOE adopted provisions to regulate sodium ion batteries in the same manner as lithium ion batteries. PHMSA now aims to harmonize with current international regulations by adopting those same provisions.

PHMSA expects that as sodium ion batteries become more widely used, harmonizing the HMR with international standards will provide a baseline of uniform transport standards. For sodium ion batteries being transported domestically or exported by U.S. companies abroad, this standardization will ultimately allow for reduced burdens, increased efficiency, and avoid unnecessary costs for domestic industries—leading to less expensive product options for domestic consumers. See the Section-By-Section Review in Section 173.185 for further detail of the proposed classification, packaging provisions, and exceptions for sodium ion batteries.

In addition, PHMSA proposes to assign a new special provision for sodium ion batteries, and to make many of the existing special provisions related to lithium ion batteries applicable to sodium ion batteries. See the Section-By-Section Review in Section 172.102 for further details of proposed special provisions applicable to sodium ion batteries.

Lastly, PHMSA proposes to make one of the vessel stowage codes that is currently assigned to lithium ion batteries applicable to sodium ion batteries, including sodium ion batteries packed with, or contained in, equipment. PHMSA expects this change will enhance safety by ensuring sodium ion batteries are properly stowed when transported by vessel. See the Section-By-Section Review in Section 172.101, column (10) discussion of for additional details on this amendment.

Disilane (UN3553)

PHMSA proposes to add a new entry, “UN3553, Disilane, 2.1,” to the HMT.

¹² UNECE, *Sodium ion batteries: Assignment of a dedicated UN number and related special provisions—Follow-up on document ST/SG/AC.10/C.3/2020/45/Rev.1* (Sept. 20, 2021), available at: <https://unece.org/sites/default/files/2021-09/ST-SG-AC.10-C.3-2021-55e.pdf>.

Disilane is a pyrophoric liquified gas under pressure that is spontaneously flammable in air and does not require spark or flame to ignite. Disilane is used primarily in the manufacture of integrated circuits in various electronics, including computer processors. Despite its pyrophoric properties, disilane is commonly transported under the generic shipping description, “UN3161, Liquefied gas, flammable, n.o.s. (Disilane).” As a part of their review of proposed amendments to the UN Model Regulations, the UNSCOE discussed the need for a more specific proper shipping name that would better reflect the flammable and pyrophoric properties of disilane. The UNSCOE concluded that the use of the generic description for disilane only reflects its flammability properties but not the pyrophoric properties. Unlike “UN2203, Silane” and other similar pyrophoric materials that are forbidden for transport by cargo aircraft, disilane, as currently transported under “UN3161, Liquefied gas, flammable, n.o.s. (Disilane),” is not forbidden for transport by cargo aircraft.¹³ The UNSCOE concluded that a separate shipping description for disilane should be created to clarify the pyrophoric properties of the material and ensure that there is no possibility of disilane being transported by air.

Consistent with the ICAO Technical Instructions for disilane, PHMSA proposes to add the entry to the HMT, noting that “Forbidden” would be indicated in column (9) for both passenger and cargo aircraft. For shipments by vessel, PHMSA proposes to assign stowage code D, which requires that the material is stowed on deck when transported on a cargo vessel and further limits the stowage of the material by vessel when passengers are present. In addition, PHMSA proposes to assign segregation codes, 40, 57, and 104 in column (10B) to require that disilane be segregated from living quarters, from chlorine, and from bromine to prevent hazardous reactions. These stowage and segregation provisions are consistent with the requirements adopted in Amendment 42–24 to the IMDG Code. PHMSA expects that adding this new entry and the new packaging provisions will enhance safety by providing a clearer hazard identification of disilane and ensuring that there is no possibility of this product being transported by air.

¹³ Both UN2203 and UN3161 are forbidden for transport aboard passenger aircraft.

Gallium Contained in Manufactured Articles (UN3554)

PHMSA proposes to add “UN3554, Gallium contained in manufactured articles,” as a new entry to the HMT. Gallium is a silver white metal with a low melting point and, though corrosive to certain metals like aluminum, is widely considered a safer, non-toxic alternative to mercury. Gallium and its alloys are used in a variety of products in place of mercury products—such as thermometers and UV lamps. This transition away from mercury has been driven largely in response to the 2013 Minamata Convention on Mercury (*i.e.*, Convention).¹⁴ The Convention aimed to reduce mercury emissions and exposure, through the reduced production, import, and export of mercury-containing products. Since 2017, manufacturers have explored substitutes to mercury-containing products.¹⁵ To facilitate the use of this alternative material, PHMSA proposes new packaging provisions for this new entry to mirror the provisions for “UN3506, Mercury contained in manufactured articles”—which have been authorized in the HMR since 2013 and have a well demonstrated safety record.¹⁶ See the Section-by-Section Review in Section 173.162 for additional information on the new packaging provisions for this entry. PHMSA expects that this new entry will provide consistency with international regulations and allow for a less toxic material to be integrated into the market.

Trifluoromethyltetrazole-Sodium Salt (UN3555)

PHMSA proposes to add a new entry, “UN3555, Trifluoromethyltetrazole-sodium salt in acetone, *with not less than 68% acetone, by mass*, 3, PG II,” to the HMT. PHMSA proposes to add a new entry, “UN3555, Trifluoromethyltetrazole-sodium salt in acetone, *with not less than 68% acetone, by mass*, 3, PG II,” to the HMT. Trifluoromethyltetrazole, sodium salt (TFMT-Na) in acetone is a desensitized explosive compound used as a precursor material for a new insecticide that is entering the market. Due to the explosive properties of the dry substance, it is only handled and

transported as a homogenous solution in acetone. As a result of its unique properties, the UNSCOE agreed to create a new entry on the DGL to facilitate its transport as its use is expected to increase across various countries.

PHMSA proposes to mirror the UN Model Regulations’ corresponding packaging provisions for this hazardous material by creating a new special provision, Special Provision 234. This new special provision will specify the authorized packaging for this material. In addition, PHMSA is assigning Special Provision 74 which would require that:

1. The material be protected from direct sunlight; and
2. The material be stored or kept in a cool and well-ventilated place away from all sources of heat.

PHMSA is also assigning Special Provision 162 to permit the material be transported under the provisions of Class 3, provided it is packed so that the percentage of diluent will not fall below the stated amount at any time during transport. PHMSA notes that the entry includes “Forbidden” in column (9) for both passenger and cargo aircraft, which is consistent with the ICAO Technical Instructions. PHMSA expects that the addition of this new HMT entry and associated authorized packaging requirements will facilitate the safe transport of this emerging product domestically and internationally.

Lithium Ion Battery Powered Vehicle, Lithium Metal Battery Powered Vehicle, and Sodium Ion Battery Powered Vehicle (UN3556, UN3557, and UN3558, Respectively)

PHMSA proposes to add three new entries to the HMT for vehicles powered by lithium ion batteries, lithium metal batteries, and sodium ion batteries to address the massive market growth in personal mobility devices, such as e-bikes, e-scooters, e-skateboards, and other lightweight vehicles. The proposed new entries are: “UN3556, Vehicle, lithium ion battery powered,” “UN3557, Vehicle, lithium metal battery powered,” and “UN3558, Vehicle, sodium ion battery powered.” These entries will provide more precise descriptions for vehicles powered by various battery chemistries (*e.g.*, lithium or sodium ion cells or lithium metal cells), rather than relying on the broadly used entry “UN3171, Battery-powered vehicle.” Currently, there are two distinct entries that cover products containing lithium ion and lithium metal cells and batteries (UN3480 and UN3090); however, the same differentiation does not exist for vehicles powered by various battery types. The UNSCOE addressed this lack

of distinction, clarity, and consistency by adding these three new UN numbers and proper shipping names to the DGL in the UN Model Regulations. PHMSA agrees with the UNSCOE’s solution and expects that the addition of these specific hazardous materials descriptions will provide a differentiation between vehicles powered by lithium batteries, sodium ion batteries and other battery powered vehicles and help to identify better the batteries in these vehicles for emergency response purposes. PHMSA does not expect that this amendment will impose additional costs as the packaging provisions are the same for each vehicle type. For example, non-spillable battery powered vehicles should continue to use the entry “UN3171, Battery-powered vehicle.” PHMSA expects that the addition of these new entries will facilitate the efficient transport of these hazardous materials by providing better shipping descriptions and more precise hazard communication.

Additions to Appendix B to § 172.101—List of Marine Pollutants

Appendix B to § 172.101—List of Marine Pollutants lists potential marine pollutants as defined in § 171.8 of the HMR. To align with Amendment 42–24 to the IMDG Code, PHMSA proposes to add isopropenylbenzene, 2-phenylpropene, and cobalt dihydroxide powder, *containing more than 10 percent respirable particles* to this list. Isopropenylbenzene is currently listed by name in the HMT under UN2303 and has the same chemical structure as 2-phenylpropene, which makes the two names synonymous. Following additional testing—which was required for compliance with the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) regulations in the EU—the IMO agreed to add these entries to the list of marine pollutants in Amendment 42–24 of the IMDG Code. The testing results showed that the substance meets the criteria to be classified as an “Environmentally hazardous substance (aquatic environment)” as stipulated in section 2.9.3 of the IMDG Code.

With respect to the addition of cobalt dihydroxide powder *containing more than 10 percent respirable particles* to the marine pollutants list, in a previous rulemaking—HM–215Q—PHMSA added this material to the HMT as “UN3550, Cobalt dihydroxide powder *containing more than 10 percent respirable particles*.”¹⁷ PHMSA made that addition to harmonize with changes made to the Amendment 41–22 to the

¹⁴ United Nations, *2013 Minamata Convention on Mercury* (Oct. 10, 2013), available at: <https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf>.

¹⁵ UNECE, *Proposal to amend SP 366, making it also adjust to Gallium contained in manufactured articles* (Apr. 16, 2021), available at: <https://unece.org/sites/default/files/2021-04/ST-SG-AC.10-C.3-2021-17e.pdf>.

¹⁶ 78 FR 988 (Jan. 7, 2013).

¹⁷ 89 FR 25434 (Apr. 10, 2024).

IMDG Code and 2023–2024 edition to the ICAO Technical Instructions, and the 22nd revised edition of the UN Model Regulations, after testing required under REACH regulations determined that this material poses an inhalation toxicity hazard. This material was also added to the list of the marine pollutants in Amendment 41–22 of the IMDG Code; however, PHMSA inadvertently omitted this material as an entry on the list of marine pollutants under the HM–215Q rulemaking. Like isopropenylbenzene/2-phenylpropene, PHMSA added cobalt dihydroxide powder, *containing more than 10 percent respirable particles* because that material also meets the criteria under the IMDG Code to be classified as “Environmentally hazardous substance (aquatic environment).” PHMSA proposes to correct this unintentional oversight and add “Cobalt dihydroxide powder *containing more than 10 percent respirable particles*” to the list of marine pollutants. PHMSA expects that these amendments will help improve safety to the aquatic environment for the transport of these materials and that the harmonization of the list of marine pollutants will facilitate appropriate transport of these materials.

Revisions to the HMT Columns of Information

Column (1) Symbols

Section 172.101(b) describes column (1), which may contain one of six symbols: “+”, “A”, “D”, “G”, “I” and “W”. The plus (+) sign fixes the proper shipping name, hazard class, and packing group for that entry without regard to whether the material meets the definition of that class, packing group, or any other hazard class definition. When the plus sign is assigned to a proper shipping name in column (1) of the HMT, it means that the material is known to pose a risk to humans.

PHMSA proposes to add a (+) in column (1) of the HMT for the following entries: “UN1835, Tetramethylammonium hydroxide aqueous solution *with more than 2.5 percent but less than 25 percent tetramethylammonium hydroxide*”, “UN3423, Tetramethylammonium hydroxide, solid,” and “UN3560, Tetramethylammonium hydroxide aqueous solution *with not less than 25 percent tetramethylammonium hydroxide*.” As discussed below, PHMSA proposes to amend the hazard classification for these entries based on additional data regarding their toxicity (see additional discussion of TMAH amendments

throughout the Section-by-Section discussion 172.101). The additions in column (1) would reflect the basis for these classification changes.

In addition, this proposed amendment would align with the changes adopted in the 23rd revised edition of the UN Model Regulations, which assigned Special Provision 279 to these entries. Special Provision 279, like the (+) in column (1), fixes the assigned classification or packing group based on human experience rather than the strict application of classification criteria. PHMSA expects this change will enhance safety by ensuring that these materials are properly classified and packaged to address the newly identified toxicity hazard.

Column (2) Hazardous Materials Descriptions and Proper Shipping Names

Section 172.101(c) describes column (2) of the HMT and the requirements for hazardous materials descriptions and PSNs. PHMSA proposes to revise the hazardous material description for “UN1835, Tetramethylammonium hydroxide solution, 8, PG II and III.” For the PG II entry, PHMSA proposes to add the word “aqueous” as part of the PSN and include a concentration range in italics to read “aqueous solution *with more than 2.5 percent but less than 25 percent tetramethylammonium hydroxide*.” For the PG III entry, PHMSA proposes to add the word “aqueous” as part of the PSN and include a concentration range to read “aqueous solution *with not more than 2.5 percent tetramethylammonium hydroxide*.” These proposals align with the proposed changes to the classification of TMAH material as discussed above. PHMSA expects that they will provide an additional level of safety for transportation of aqueous solutions of TMAH by more accurately describing the material.

PHMSA also proposes to modify the proper shipping name of “UN1010, Butadienes and hydrocarbon mixture, stabilized *containing more than 40 percent butadienes*,” by revising the concentration range in italics from “containing more than 40 percent butadienes” to “containing more than 20 percent butadienes.” PHMSA modified this hazardous material description in a prior rulemaking, HM–215G, by adding the italicized text that stipulated the 40 percent concentration of butadienes to describe better certain mixtures.¹⁸ This change was intended to facilitate the classification and transport of mixtures

of liquefied petroleum gases, which were already being classified under UN1010 in other countries. However, after evaluating typical shipments of butadiene/hydrocarbon-mixtures, the European Chemical Industry Council (Cefic) determined that most fall within the 20 to 40 percent butadiene concentration range. As a result, the current butadiene concentration requirement of 40 percent or more associated with the use of UN1010 means that less accurate PSNs, such as “UN1965, Hydrocarbon gas mixture, liquefied, n.o.s.,” or “UN3161, Liquefied gas, flammable, n.o.s.,” are used for many shipments of this material (*i.e.*, shipments with concentrations of butadienes below 40 percent). The UNSCOE reasoned that it was preferable to lower the concentration threshold to facilitate the use of the proper shipping description for a wider group of shipments, given that this PSN clearly reflects the specific danger of butadiene (*e.g.*, carcinogenic), as opposed to using a generic “n.o.s.” entry, such as “UN3161, Liquefied gas, flammable, n.o.s.” This change would provide emergency responders with immediate information regarding the material being transported and removes the need to seek out the shipping paper to determine that butadiene is involved in an incident. PHMSA agrees with this determination and expects that adjusting the concentration range associated with this PSN will improve safety by providing first responders with better information for effectively responding to incidents involving butadiene mixtures, as well as providing important carcinogenicity risk information for handlers of these mixtures.

For the entries “UN3292, Batteries, containing sodium” and “UN3292, Cells containing sodium,” PHMSA proposes to revise the PSNs to “Batteries, containing metallic sodium *or* sodium alloy,” and “Cells, containing metallic sodium *or* sodium alloy,” respectively. This change will harmonize the entries with the UN Model Regulations, which revised the UN3292 entry to provide a clear distinction between sodium metal batteries and the new HMT entries for sodium ion batteries. PHMSA expects this proposal will improve safety by providing additional clarity to ensure shipments of batteries, specifically sodium metal batteries and sodium ion batteries, are properly classified, packaged, and transported.

¹⁸ 69 FR 76044 (Dec. 20, 2004).

Column (3) Hazard Class or Division

Section 172.101(d) describes column (3) of the HMT, which designates the hazard class or division corresponding to the PSN of that entry. As part of the changes for TMAH discussed above, PHMSA proposes to change the primary hazard class of “UN3423, Tetramethylammonium hydroxide, solid” to align with the with changes adopted in the 23rd revised edition of the UN Model Regulations. Currently, UN3423 is a Class 8 corrosive material, but both human exposure and toxicity studies have demonstrated that solid TMAH has a significant toxicity hazard as well. UN3423 demonstrates a toxicity hazard and meets the criteria for Class 8 and Division 6.1 hazards. In accordance with § 173.2a, a Division 6.1 hazard should be the primary hazard class as it has precedence over a Class 8 hazard when classifying a material with multiple hazards. For that reason, PHMSA proposes to replace “8” in column (3) with “6.1” and add Class 8 as a subsidiary hazard to column (6). PHMSA expects this proposed action will improve safety by more accurately communicating the primary hazard of the material and providing uniform hazard communication for international shipments.

Column (5) Packing Group

Section 172.101(f) describes column (5) of the HMT, which specifies one or more packing groups (PG I, II, or III) assigned to certain materials. A PG indicates the required level of packaging according to the degree of danger presented by hazardous materials.

PHMSA proposes to remove the PG assigned to two HMT entries: “UN2028, Bombs, smoke, non-explosive, with corrosive liquid, without initiating device” and “UN3165, Aircraft hydraulic unit fuel tank (*containing a mixture of anhydrous hydrazine and monomethyl hydrazine*) (M86 fuel).” PHMSA proposes to adopt these changes for consistency with the HMR, which does not assign PGs to articles in classes other than Class 1 in the HMT, and to align with the conventions adopted in the UN Model Regulations in 2012, which also removed PGs assigned to all articles in the DGL. PHMSA expects that removing this inconsistency will maintain the current level of safety for transport of these materials.

In addition, as a part of various changes discussed above pertaining to the hazard classification of TMAH, PHMSA proposes to change the PG of “UN3423, Tetramethylammonium hydroxide, solid” from PG II to PG I.

This change in assignment from PG II to PG I is based on human experience and toxicity data that indicates a PG I toxicity hazard for TMAH solids is appropriate. PHMSA expects that this change will enhance safety by requiring a higher standard for packaging for this material.

Column (6) Label Codes

Section 172.101(g) describes column (6) of the HMT, which contains label codes representing the hazard warning labels required for a package filled with a material conforming to the associated hazard class and proper shipping name, unless the package is otherwise excepted from labeling. The first code is indicative of the primary hazard of the material. Additional label codes are indicative of subsidiary hazards.

For “UN3423, Tetramethylammonium hydroxide, solid,” which is currently classified as a Class 8 corrosive material, PHMSA proposes to revise the label code to indicate a primary Division 6.1 and subsidiary Class 8 hazard. For “UN3560, Tetramethylammonium hydroxide aqueous solution *with not less than 25% tetramethylammonium hydroxide*,” PHMSA proposes to add a 6.1 and 8 label code to correspond to this entry’s primary and subsidiary hazards. For “UN1835, TMAH aqueous solutions *with more than 2.5% but less than 25% TMAH*, PGII,” PHMSA proposes to add a subsidiary Division 6.1 hazard, which would also be reflected in column (6). Accidental human exposure and acute dermal toxicity studies demonstrates the toxic properties of TMAH, which is discussed in greater detail above in the summary of amendments associated with the new TMAH solution HMT entry (*i.e.*, UN3560). PHMSA expects these changes will increase safety by more appropriately communicating the hazards of these materials.

Column (7) Special Provisions

Section 172.101(h) describes column (7) of the HMT, which assigns special provisions for each HMT entry. Section 172.102 provides for the meaning and requirements of the special provisions assigned to entries in the HMT. The proposed revisions to column (7) of certain entries in the HMT are discussed below.

For “UN1006, Argon,” “UN1013, Carbon dioxide,” “UN1046, Helium,” and “UN1066, Nitrogen,” PHMSA proposes to assign a new Special Provision 406, which would allow these materials to be transported in DOT specification cylinders and UN pressure receptacles as a limited quantity material in quantities not more than

1000 ml (34 fluid ounces) per package. For additional details on this new provision, see the Section-by-Section Review in Section 172.102.

For “UN1010, Butadienes and hydrocarbon mixture, stabilized *containing more than 20% butadienes*,” PHMSA proposes to assign new Special Provision 402, which would specify required conditions for transport under this entry. For additional information on this new special provision, see the Section-by-Section Review in Section 172.102.

For “UN1391, Alkali metal dispersions *or* Alkaline earth metal dispersions,” and “UN3482, Alkali metal dispersions, flammable *or* Alkaline earth metal dispersions, flammable,” PHMSA proposes to assign six special provisions, *i.e.*, Special Provisions 64, 65, T13, TP2, TP7, and a newly proposed Special Provision, TP42. These special provisions would provide clear direction as to which alkali metals and alkaline earth metals are included under these PSNs and would provide packaging flexibility by authorizing the transport of these materials, which are slurries comprised of metal powders and a hydrocarbon solvent, in portable tanks rather than limiting these materials to other bulk and non-bulk packaging provisions in §§ 173.201 and 173.244. These additional portable tank packaging provisions were adopted in the 23rd revised edition of the UN Model Regulations to facilitate the transport of alkali metals that are incorporated in liquid dispersions for the manufacture of items such as lithium battery anodes. As the global demand for lithium increases, particularly given the potential use in energy storage applications, the need has arisen for the international transport of alkali metal and alkaline earth metal dispersions in portable tanks. Prior to changes adopted in the UN Model Regulations, the DGL did not indicate any portable tank instructions for these materials. Consequently, these hazardous materials were not permitted to be transported in UN portable tanks unless a competent authority approval was granted. The newly assigned T and TP code packaging provisions were adopted for consistency with the Guiding Principles for the Development of the UN Model Regulations, which indicates that liquid Division 4.3 substances of PG I are—in principle—considered suitable for transport in portable tanks conforming to portable tank instructions.¹⁹ To facilitate the transport

¹⁹ This document outlines the underlying principles that have been applied in developing the

of these materials, PHMSA proposes to amend the associated packaging provisions to authorize the transport of alkali metal dispersions and alkaline earth metal dispersions in portable tanks that conform to tank instructions in Special Provisions T13, which requires a higher minimum test pressure of 6 bar, a minimum shell thickness of 6 mm, and prohibits bottom outlets; TP2, which provides a specific formula for the maximum degree of filling; and TP7, which requires that the vapor space has to be purged of air by nitrogen or other means. In addition, PHMSA proposes to assign a new Special Provision TP42 to add supplemental provisions for the transport of alkali metal dispersions that are considered highly reactive. PHMSA expects that by expanding the packaging options, these amendments will facilitate access to affordable, reliable, sustainable, and modern energy sources and offer greater flexibility in the packaging that may be used to transport these materials. For additional details on these TP codes, see the Section-by-Section Review in Section 172.102.

For “UN1835, Tetramethylammonium hydroxide aqueous solution with more than 2.5 percent but less than 25 percent tetramethylammonium hydroxide, PGII,” “UN1835, Tetramethylammonium hydroxide aqueous solution with not more than 2.5 percent tetramethylammonium hydroxide, PGIII,” “UN3560, Tetramethylammonium hydroxide aqueous solution with not less than 25 percent tetramethylammonium hydroxide,” and “UN3423, Tetramethylammonium hydroxide, solid,” PHMSA proposes to assign two new special provisions—408 and 409. Special Provision 408 would be assigned to UN1835 (PG II and PG III) and UN3560, and Special Provision 409 would be assigned to UN1835 (PG II and PG III), UN3560, and UN3423. Special provision 408 will provide instruction on appropriate hazardous materials descriptions for aqueous solutions of TMAH with differing formulations and constituents, while Special Provision 409 will provide a delayed compliance date for use of the new HMT entries and revised hazard information to allow industry time to adjust their hazard communication and associated packaging and handling provisions. See the Section-by-Section Review in Section 172.102 for additional discussion of these new special provisions. PHMSA expects that these proposed changes will facilitate the safe

transport of these materials by clearly outlining the hazardous communications requirements.

For “UN2795, Batteries, wet, filled with alkali, *electric storage*,” “UN3292, Batteries, containing metallic sodium or sodium alloy,” and “UN3292, Cells, containing metallic sodium or sodium alloy,” PHMSA proposes to assign new Special Provision 401 to help to distinguish between shipping descriptions that describe batteries and cells with sodium as their electrolyte. Special Provision 401 will also be assigned to the proposed new entries for sodium ion batteries, “UN3551, Sodium ion batteries with *organic electrolyte*,” “UN3552, Sodium ion batteries contained in equipment with *organic electrolyte*,” and “UN3552, Sodium ion batteries packed with equipment, with *organic electrolyte*.” For additional information, see the Section-by-Section Review in Section 172.102.

For “UN2803, Gallium,” PHMSA proposes to assign Special Provision 365, which is also proposed to be amended in this NPRM. See the Section-by-Section Review in Section 172.102 for further discussion of amendment to Special Provision 365. Currently, “UN2803, Gallium” is only assigned to Special Provisions T1 and TP33, which provide requirements for portable tanks. Special Provision 365 would provide instructions on the use of “UN2803, Gallium,” or the newly added entry, “UN3554, Gallium contained in manufactured articles.”

For “UN3270, Nitrocellulose membrane filters, with not more than 12.6% nitrogen, by dry mass,” PHMSA proposes to amend the special provision that is currently assigned, Special Provision 43. This special provision would provide an exception from regulation for these materials that meet the packaging requirements specified in Special Provision 43. For additional information, see the Section-by-Section Review in Section 172.102.

“UN3423, Tetramethylammonium hydroxide, solid,” is currently assigned several special provisions, including IB8, which provides the list of authorized intermediate bulk containers (IBCs) for this material. PHMSA proposes to replace IB8 with IB7. This change is consistent with the proposed revisions pertaining to the hazard classification of TMAH solids. Like IB8, IB7 authorizes IBCs made of metal, rigid plastics, composite materials, and wood. But unlike IB8, IB7 does not authorize fiberboard or flexible IBCs. PHMSA finds that removing the authorization for fiberboard and flexible IBCs is an appropriate change to ensure continued safety for the transport of this material

given the proposed revised hazards presented during transportation. Consistent with the revised assignment of IB7, PHMSA also proposes to replace IP2 with IP1. IP2 only requires certain IBCs to be offered for transportation in a closed freight container or a closed transport vehicle, whereas IP1 requires the use of closed freight containers or a closed transport vehicle for all IBC types that contain UN3423. Assigning IP1 is consistent with assignment of IP1 to other Division 6.1, PG I materials listed in the HMT. PHMSA proposes to replace T3 with T6 as well. Replacing T3 with T6 will increase the safety and performance requirements of these packagings by increasing the minimum test pressure from 2.65 bar to 4 bar. This change reflects the same change made in the latest edition of the UN Model Regulations.

PHMSA proposes to assign Special Provision 162 (as proposed to be amended, see discussion in Section-by-Section Review in Section 172.102 for additional information) to ten additional entries on the HMT. Currently, Special Provision 162 is only assigned to desensitized explosives classed as Division 4.1 solids. PHMSA proposes to amend the text of Special Provision 162 to include desensitized explosives classified as Class 3 flammable liquids. PHMSA also proposes to assign Special Provision 162 to some additional Division 4.1 hazardous materials for which this standard applies but which were not previously specified. PHMSA proposes to assign Special Provision 162 to the following Class 3 and Division 4.1 hazardous materials as follows:

- “UN1204, Nitroglycerin solution in alcohol with not more than 1 percent nitroglycerin, 3, PG II”.
- “UN2059, Nitrocellulose, solution, flammable with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose, 3, PG I”.
- “UN2059, Nitrocellulose, solution, flammable with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose, 3, PG II”.
- “UN2059, Nitrocellulose, solution, flammable with not more than 12.6 percent nitrogen, by mass, and not more than 55 percent nitrocellulose, 3, PG III”.
- “UN2555, Nitrocellulose with water with not less than 25 percent water, by mass, 4.1, PG II”.
- “UN2556, Nitrocellulose with alcohol with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass, 4.1, PG II”.
- “UN2907, Isosorbide dinitrate mixture with not less than 60 percent

lactose, mannose, starch or calcium hydrogen phosphate, 4.1, PG II".

- "UN3064, Nitroglycerin, solution in alcohol, *with more than 1 percent but not more than 5 percent nitroglycerin, 3, PG II*".

- "UN3319, Nitroglycerin mixture, desensitized, solid, n.o.s. *with more than 2 percent but not more than 10 percent nitroglycerin, by mass, 4.1, PG II*".

- "UN3343, Nitroglycerin mixture, desensitized, liquid, flammable, n.o.s. *with not more than 30 percent nitroglycerin, by mass, 3, PG II*".

- "UN3344, Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. or Pentaerythritol tetranitrate mixture, desensitized, solid, n.o.s. or PETN mixture, desensitized, solid, n.o.s., *with more than 10 percent but not more than 20 percent PETN, by mass, 4.1, PG II*".

- "UN3357, Nitroglycerin mixture, desensitized, liquid, n.o.s. *with not more than 30% nitroglycerin, by mass, 3, PG II*".

PHMSA expects that assigning this special provision will enhance safety by ensuring that both solid and liquid desensitized explosives are subject to uniform performance standards for the diluent during transportation.

PHMSA proposes to make corrections to multiple HMT entries that were inadvertently modified in previous rulemakings. Specifically, PHMSA proposes to remove IP8 from column (7) of the HMT for the following assigned UN numbers: "UN2246 Cyclopentene", "UN1593, Dichloromethane," "UN1164 Dimethyl sulfide," "UN1891, Ethyl bromide," "UN2622, Glycidaldehyde," "UN2288, Isohexenes," "UN2612, Methyl propyl ether," "UN2460, 2-Methyl-2butene," "UN1234 Methylal," "UN1265, Pentanes, PGII," and "UN1278, 1-Chloropropane." IP8 states that ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of the HMR at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F). IP8 was meant to be assigned to ammonia solutions, but due to an editorial error, IP8 was assigned to these UN numbers, which are not ammonia solutions.

Finally, for "UN2555, Nitrocellulose with water *with not less than 25 percent water, by mass, 4.1, PG II*" and "UN2556 Nitrocellulose with alcohol *with not less than 25 percent alcohol by mass, and with not more than 12.6 percent nitrogen, by dry mass, 4.1, PG II*," PHMSA proposes to assign Special

Provision 197. This special provision was inadvertently removed from these entries in the HM-215Q final rule.²⁰ PHMSA expects that this correction will provide enhanced safety by removing conflicting packaging provisions from these entries.

Column (8) Packaging

Section 172.101(i) explains the purpose of column (8) in the HMT. Columns (8A), (8B), and (8C) specify the applicable sections for exceptions, non-bulk packaging requirements, and bulk packaging requirements, respectively. Columns (8A), (8B), and (8C) are completed in a manner which indicates that "§ 173" precedes the designated numerical entry. Column (8A) contains exceptions from some of the requirements of the HMR. The referenced exceptions are in addition to those specified in subpart A of part 173 and elsewhere in the HMR. The word "None" in this column means no packaging exceptions are authorized, except as may be provided by special provisions in column (7).

For "UN3423, Tetramethylammonium hydroxide, solid," and based on the proposed classification changes to a Division 6.1 (8), PG I material, PHMSA proposes to remove the "154" in column (8A), which currently directs the reader to exceptions for Class 8 (corrosive materials) and to replace it with "None." In addition, in column (8B), "213" would be replaced by "211" to direct users to the requirements for authorized non-bulk packagings for solid hazardous materials in PG I in § 173.211. Lastly, in column (8C), "240" would be replaced with "242" to direct users to requirements for authorized bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards. PHMSA expects that these changes will improve safety by providing more appropriate packaging requirements based on the newly identified hazards posed by this material.

Column (9) Quantity Limitations

Section 172.101(j) explains the purpose of column (9) in the HMT. Column (9) specifies quantity limitations for packages transported by air and rail. Column (9) is divided into two columns: column (9A) provides quantity limits for passenger aircraft/rail, and column (9B) provides quantity limits for cargo aircraft.

To align with changes adopted in the 2025–2026 edition of the ICAO Technical Instructions, PHMSA proposes to amend the quantity

limitations for TMAH solids (UN3423), consistent with reclassification of this entry. With the proposed new Division 6.1, PG I primary hazard for UN3423, different quantity limitations are required. PHMSA proposes to replace "15 kg" with "1 kg" in column (9A) and to replace "50 kg" with "15 kg" in Column (9B), which is consistent with the quantity limits for other Division 6.1, PG I entries in the HMT. PHMSA expects this proposed change to improve safety by appropriately limiting the quantities of this material when transported by rail and air.

Column (10) Vessel Stowage

Section 172.101(k) explains the purpose of column (10) of the HMT and prescribes the vessel stowage and segregation requirements for specific entries. Column (10) is divided into two columns: column (10A) [Vessel stowage] specifies the authorized stowage locations on board cargo and passenger vessels; and column (10B) [Other provisions] specifies special stowage and segregation provisions. The meaning of each code in column (10B) is set forth in § 176.84.

For "UN1791, Hypochlorite solutions, PG III," PHMSA proposes to make a correction to the HMT entry. In its HM-215Q rulemaking, PHMSA removed the stowage codes 53 and 58, which require stowage "separated from alkaline compounds" and "separated from cyanides," respectively.²¹ These stowage codes were intended to be applied to several HMT entries to ensure proper segregation between acids and both amines and cyanides, but should not have included "UN1791, Hypochlorite solutions." When this removal of the stowage codes 53 and 58 was implemented in HM-215Q, PHMSA inadvertently omitted the removal of the aforementioned stowage codes for the PG III entry. Therefore, PHMSA proposes to remove the stowage codes 53 and 58 from column (10B) of "UN1791, Hypochlorite solutions, PG III." PHMSA expects that this correction will remove the burden faced by shippers who have had to segregate hypochlorite solutions for compliance with the HMR, which is inconsistent with the requirements of the IMDG Code.

For "UN2067, Ammonium nitrate-based fertilizer," PHMSA proposes to assign stowage code 116 in column (10B) (as proposed to be amended, see discussion in Section-by-Section Review of § 176.84). This stowage code is currently assigned to "UN1942, Ammonium nitrate, *with not more than*

²⁰ 89 FR 25434 (Apr. 10, 2024).

²¹ 89 FR 25434 (Apr. 10, 2024).

0.2% combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance,” and PHMSA proposes to also assign it to “UN2067, Ammonium nitrate-based fertilizer.” This change in stowage requirements was adopted in Amendment 42–24 of the IMDG Code because these substances have similar chemical properties, pose similar hazards, may be transported in the same way (e.g., conventional reefer ship, and stored in areas that contain multiple compartments or on vessels with tween deck storage). PHMSA expects this new assignment to provide clarity and consistent direction regarding how these ammonium-based hazardous materials are to be stowed to ensure vessel safety.

For “UN2303, Isopropenylbenzene,” PHMSA proposes to assign stowage code 25 in column (10B). This stowage code requires that the hazardous material be “protected from sources of heat.” This new stowage requirement for UN2303 was added in Amendment 42–24 to the IMDG Code because the material is liable to polymerize and is generally stabilized with a small quantity of 4-*tert*-butylcatechol, which should be stored at temperatures not exceeding 30 °C. PHMSA agrees with the addition of this extra stowage requirement and expects that protecting the material from sources of heat will enhance safety by ensuring that the stabilization methods applied to these packages will not become ineffective during transport by vessel.

For “UN3129, Water-reactive liquid, corrosive, n.o.s., PG II and III,” “UN3130, Water-reactive liquid, toxic, n.o.s., PG II and III,” and “UN3148, Water-reactive liquid, n.o.s., PG I, II, and III,” PHMSA proposes to revise vessel stowage requirements in column (10A). Currently, these entries are assigned stowage category “E.” Stowage category “E” indicates that a material may be stowed “on deck” or “under deck.” PHMSA proposes to change the code in column (10A) for these entries to stowage category “D.” This would indicate that these entries must be stowed on deck only and would not be permitted to be stowed under deck. As these materials will not be allowed to be stowed under deck, PHMSA also proposes to revise column (10B) by removing assignment of stowage code “85,” which states that a material stowed under deck must be in a mechanically ventilated space, from the entries UN3129 and UN3130. PHMSA also proposes to add new stowage code “160” to column (10B) to the entries UN3129, UN3130, and UN3148. This new code will indicate that these

materials must be stowed away from potential sources of ignition. These changes in stowage requirements mirror those adopted in Amendment 42–24 to the IMDG Code to address a hazard communication conflict.

Currently, there is no general “n.o.s.” entry for liquids classified as a Division 4.3 (dangerous when wet) that also meet the flammable liquid definition (i.e., water-reactive liquids, flammable, n.o.s.), because the Division 4.3 classification would take precedence in hazard classification in accordance with § 173.2. Therefore, shippers are required to classify and to describe these materials as “UN3148, Water-reactive liquid, n.o.s.,” which does not provide any indication that the liquid also meets a flammable liquid definition. This requires carriers to assess the flashpoint of a Division 4.3 liquid described as “UN3148 Water-reactive liquid, n.o.s.,” “UN3130, Water-reactive liquid, toxic,” or “UN3129, Water-reactive liquid, corrosive, n.o.s.,” by requesting a safety data sheet, which imposes avoidable administrative burdens for both carriers and shippers. To address this, the IMO revised the stowage categories for the entries discussed from “E” to “D,” which would prohibit these materials from being stored under deck regardless of their flash point. This amendment would alleviate the burden for carriers to determine material flashpoints to identify their prescribed stowage locations. PHMSA agrees with these revisions and proposes to amend the entries as discussed above.

The IMDG code also requires packages containing flammable gases and flammable liquids having a flashpoint of less than 23 °C to be stowed away from potential sources of ignition. However, there are currently no stowage codes that memorialize this requirement. To address this, the IMDG code added new stowage code “SW31,” which indicates that flammable liquids having a flashpoint of less than 23 °C must be stowed away from potential sources of ignition, and assigned it to UN3129, UN3130, and UN3148. PHMSA expects that harmonization with these vessel stowage amendments will alleviate carriers from having to determine a material’s flash point and its correct stowage location.

For “UN3536, Lithium batteries installed in cargo transport unit *lithium ion batteries or lithium metal batteries*,” PHMSA proposes to change the code in column (10A) for this entry to stowage category “D.” This code would mean that this entry must be stowed “on deck only” on a cargo vessel or on a passenger vessel carrying a number of passengers limited to not more than the

larger of 25 passengers, or one passenger per each 3 meters of overall vessel length, but the material is prohibited on a passenger vessel in which the limiting number of passengers is exceeded. For column (10B), PHMSA proposes to add Codes “25” and “40.” As stated in § 176.84(b), Code “25” means that the material must be protected from sources of heat, and Code “40” means that the material must be stowed “clear of living quarters.” The thirty-ninth session of the CCC finalized these same changes as adopted in Amendment 42–24 of the IMDG Code for UN3536 based on position papers showing significant safety concerns with the way “lithium battery energy storage cabinets” were being regulated for stowage aboard vessels. These papers demonstrated, through simulations of fires and explosions involving the “energy storage cabinets,” that a significant risk of rupture of the hull structure of ships exists when these containers are stowed in certain positions below deck. Further, it was shown that there was significant risk to the life and safety of the crew when fires involving these containers occur and they are stowed under deck. For these reasons, the CCC, as provided for in Amendment 42–24 of the IMDG Code, adopted provisions that require stowage on deck, and in some cases, a prohibition of transport on certain vessels. Amendment 42–24 of the IMDG Code also adopted provisions that would add safety precautions by protecting the containers from sources of heat and requiring stowage clear of living quarters. PHMSA expects that these new requirements will address the hazards identified by the simulations discussed in these papers and incidents of thermal runaway associated with the transportation of “lithium battery energy storage cabinets.”

For “UN3555, Trifluoromethyltetrazole-sodium salt in acetone, with not less than 68% acetone, by mass, 3, PG II” (TFMT-Na), PHMSA proposes to add two new vessel stowage and handling codes. In Amendment 42–24 to the IMDG Code, under column 16a of the DGL, this new entry was assigned four stowage and handling codes which require for UN3555 that: it must be protected from sources of heat (SW1); cargo transport units be shaded from direct sunlight (SW11); it must be stored in cool ventilated space (H3); and that it must be kept as cool as reasonably practicable (H2). PHMSA is assigning codes “12” and “25,” which correspond to H2 and SW1, respectively. However, the HMR do not have corresponding vessel stowage and handling codes for “SW11”

and “H3,” therefore, PHMSA proposes harmonizing with the IMDG Code to add corresponding provisions by creating two new vessel stowage codes, Code 158 and Code 159. Code 158, like SW11, would instruct that “Cargo transport units shall be shaded from direct sunlight. Packages in cargo transport units shall be stowed to allow for adequate air circulation throughout the cargo.” Code 159, like H3, would instruct “During transport, it should be stowed (or kept) in a cool ventilated place.” PHMSA expects that these stowage and handling provisions will provide the appropriate level of safety for the transport of this material on vessels.

For “UN3560, Tetramethylammonium hydroxide aqueous solution *with not less than 25 percent tetramethylammonium hydroxide*,” PHMSA proposes to add a new stowage code “D” in column (10A). This code would mean that the material must be stowed “on deck only” on a cargo vessel, or on a passenger vessel carrying a maximum of 25 passengers, or one passenger for each three meters of overall vessel length, but if the limiting number of passengers is exceeded the material is prohibited onboard the vessel. This new stowage location aligns with provisions in Amendment 42–24 to the IMDG Code. In addition, in column (10B), PHMSA proposes to assign stowage code “52,” which states that materials must be stowed “separated from” acids. Section 176.83(c)(2)(iii) defines “separated from” for “on deck” stowage (category D) as separated by a distance of at least six meters (20 feet) horizontally. The assignment of these new stowage and handling requirements aligns with provisions in Amendment 42–24 to the IMDG Code. PHMSA expects this proposed change to improve safety by ensuring that this material is stowed in an appropriate location and under appropriate conditions, such as being separated from packages containing acids when transported by vessel.

Section 172.102 (Special Provisions)

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain various provisions, including packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. PHMSA proposes the following additions and revisions to the special provisions in this section:

Special Provision 43

PHMSA proposes to modify Special Provision 43, which is assigned to “UN3270, Nitrocellulose membrane filters, *with not more than 12.6% nitrogen, by dry mass*” in the HMT. These materials are most notably used in rapid test devices for infectious diseases like COVID–19, influenza, hepatitis, malaria, borreliosis, and other diseases, and as substrates for bioanalytical tests as well as pregnancy tests. Special Provision 43 states that to use this HMT entry nitrocellulose membrane filters—including paper separators and coating or backing materials—present in transport must not be able to propagate a detonation as tested by UN Manual of Tests and Criteria, Part I, Test Series 1(a). Special Provision 43 further states that nitrocellulose (NC) membrane filters in the form in which they are to be transported that do not meet the criteria for a Division 4.1 material, based on suitable burning rate tests and testing in accordance with the UN Manual of Tests and Criteria, Part III, are not subject to the HMR. Finally, NC membrane filters, each with a mass not exceeding 0.5 g, are not subject to the HMR when contained individually in an article or a sealed packet.

To further facilitate the transport of these items, which are often used in medical testing, the 23rd revised edition of the UN Model Regulations includes a new special provision assigned to UN3270 that adds conditions for exception from regulation without the need for testing. PHMSA proposes to adopt the provisions of this new special provision as part of Special Provision 43 in the HMR instead of a wholly separate special provision. Specifically, the special provision in the UN Model Regulations states that for a NC membrane filter with a nitrocellulose content that does not exceed 53 g/m², and where the net mass does not exceed 300 g per inner packaging, the NC membrane filter is not subject to regulation under certain conditions. The conditions are that they are packed with paper separators with a minimum of 80 g/m² placed between each layer of NC membrane filters; and that they are packed to maintain alignment of the NC membrane filters and paper separators in accordance with three distinct configurations. This exception was adopted based on additional tests showing that NC membrane filters with a NC content less than 53 g/m² and an NC net weight not exceeding 300 g per inner packaging do not propagate a detonation and had burn rates justifying exclusion from classification as a

Division 4.1 flammable solid in the configuration(s) defined by the provision. As stated previously, PHMSA proposes to adopt the conditions of the UN Model Regulation special provision as part of SP 43 and expects that doing so will facilitate the transport of these filters and reduce the burden of requesting a competent authority approval for transportation of each NC membrane filter type. In addition, this provision will improve the availability of the NC membrane filters for important medical devices, such as rapid test devices for determination of COVID–19 infections. PHMSA expects that the reduced regulatory burden for these products will translate to reduced costs for consumers of many commonly used products in the American pharmacological market.

Special Provision 134

Special Provision 134, which is assigned to “UN3171, Battery-powered vehicle or Battery-powered equipment,” currently indicates that the use of UN3171 only applies to vehicles or equipment powered by wet batteries, sodium batteries, lithium metal batteries, or lithium ion batteries that are transported with such batteries installed. However, with the introduction of three specific proper shipping names for battery-powered vehicles, the range of hazardous materials that can be transported under UN3171 is reduced to vehicles and equipment powered by wet batteries that are transported with such batteries installed. PHMSA proposes to amend Special Provision 134 to clarify that vehicles powered by lithium ion, lithium metal, or sodium ion batteries must be assigned to “UN3556, Vehicle, lithium ion battery powered,” “UN3557, Vehicle, lithium metal battery powered,” and “UN3558, Vehicle, sodium ion battery powered vehicle,” respectively, and to assign this special provision to these entries on the HMT. PHMSA also proposes to add language regarding vehicles transported in packagings to reiterate that, except for the battery, some parts of battery powered vehicles may be detached from the frame of the vehicle to fit in the outer packaging. This language reiterates language currently in § 173.220, which states that if a battery is removed from a battery powered vehicle (engines and machinery), and is packed in the same outer packaging, the package must be consigned as “UN3481, Lithium ion batteries packed with equipment,” “UN3091, Lithium metal batteries packed with equipment,” or “UN3552, Sodium ion batteries packed with equipment, *with organic*

electrolyte.” As this is only a clarifying editorial amendment, PHMSA expects the change will enhance safety by facilitating the proper description and classification of these vehicles and does not expect that this change will result in any additional costs for the regulated community.

Special Provision 160

Special Provision 160 is assigned to HMT entry “UN3268, Safety devices, *electrically initiated*, 9,” and outlines conditions and criteria for use of the entry. Consistent with discussions of proposed changes to the HMR regarding fire suppressant dispersing devices in §§ 172.101, 173.62, and 173.169, PHMSA proposes to revise Special Provision 160 to include a statement to clarify that the HMT entry for “UN3268, Safety devices” does not apply to fire suppressant dispersing devices described in § 173.169, specifically, those articles that are properly classed and described as “UN3559, Fire suppressant dispersing devices.” PHMSA expects that these changes will enhance safety by facilitating the proper classification of these devices.

Special Provision 162

Special Provision 162, which is assigned to HMT entries that are explosive materials desensitized by liquid (typically water) and classified as a Division 4.1 flammable solid, specifies that these materials may be transported as a Division 4.1 only if packed so that at no time during transport will the percentage of diluent (*i.e.*, the liquid used to desensitize the explosive material) fall below the percentage that is stated in the shipping description. While developing provisions for UN3555, TFMT-Na, a flammable liquid desensitized explosive (as discussed in the Section-by-Section review), the UNSCOE determined that there are no comparable provisions for entries of flammable liquid desensitized explosives classified as Class 3 flammable liquids. Consequently, the UNSCOE determined that this provision (Special Provision 28 in the UN Model Regulations) should be amended to be applicable to flammable liquid desensitized explosives. PHMSA agrees with the UNSCOE and proposes to amend the text of Special Provision 162 to ensure desensitized explosives to be transported under the provisions of Class 3 or Division 4.1, as appropriate, are packed so that the percentage of diluent will not fall below that is stated, at any time during transportation. In addition, the amendment would require, in cases where the diluent is not stated, that the substance be packed so that the

amount of explosive substance does not exceed the stated value. PHMSA expects that these changes will enhance safety by providing uniform requirements for the transport of desensitized explosives.

Special Provision 181

For shippers of lithium ion or lithium metal batteries that are “contained in” or “packed with equipment,” Special Provision 181 instructs that there are certain requirements when a package includes a combination of these lithium battery packaging configurations. This special provision requires that: the packages meet all applicable requirements in § 173.185; packages cannot exceed the quantity limits in columns (9A) and (9B) for passenger aircraft or cargo aircraft, as applicable; the package must be marked for lithium ion or lithium metal batteries packed with equipment; and the shipping paper must indicate the entry(ies) for lithium metal or lithium ion batteries (or a combination of the two) packed with equipment. With the addition of new entries for sodium ion batteries contained in and packed with equipment, and the application of provisions for lithium batteries to sodium ion batteries, PHMSA proposes to make this special provision applicable to lithium batteries contained in equipment and packed with equipment, as well as to sodium ion batteries contained in equipment and packed with equipment. PHMSA also proposes to assign Special Provision 181 to the following new HMT entries: “UN3552, Sodium ion batteries contained in equipment *with organic electrolyte*”, and “UN3552, Sodium ion batteries packed with equipment *with organic electrolyte*.”

This special provision ensures that the appropriate hazard communication for packages containing batteries both contained in and packed with equipment, indicating the slightly greater transport risk when batteries are packed with equipment versus when batteries are contained in equipment. PHMSA expects that extending this requirement will improve the level of safety achieved for lithium batteries to sodium ion batteries. Though the ICAO Dangerous Goods Panel (DGP) did not consider this change for the 2025–2026 ICAO TI, PHMSA expects that this requirement will be proposed and adopted in upcoming DGP meetings to provide consistency in the requirements for sodium ion batteries. PHMSA solicits comments on whether codifying this provision should be delayed until it is adopted in other international standards.

Special Provision 234

PHMSA proposes to add a new Special Provision 234 to provide packaging requirements for the new HMT entry, “UN3555, Trifluoromethyltetrazole, sodium salt (TFMT-Na).” This special provision mirrors the corresponding packaging and modal transport provisions in the UN Model Regulations. Specifically, PHMSA proposes that authorized packaging for TFMT-Na in acetone must be designed and constructed to prevent loss of the content of the phlegmatizer (*i.e.*, the acetone), must be transported in an upright position, and must be lead free. In addition, packaging must be limited to a maximum capacity of 250 liters (66 gallons).

Trifluoromethyltetrazole, sodium salt (TFMT-Na) in acetone is a desensitized explosive compound used as a precursor material for production of a new insecticide. Due to the explosive properties of the dry substance, it is handled and transported as a homogenous solution in acetone and currently is transported under a generic n.o.s. HMT entry. Because of its unique properties and expected increased use in insecticide manufacturing, the UNSCOE agreed to create a new entry on the DGL to facilitate its transport. As discussed earlier, Trifluoromethyltetrazole, sodium salt (TFMT-Na) is a product used in new products, such as insecticides. PHMSA expects that the addition of this new packaging provision will contribute to emerging industries by facilitating the transport of this material while providing a high level of safety.

Special Provision 252

PHMSA proposes to add a new Special Provision 252 assigned to “UN2426, Ammonium nitrate, liquid (*hot concentrated solution*).” This special provision would outline conditions under which solutions of ammonium nitrate can be transported under the HMT entry UN2426. According to this special provision, use of this entry would be based on concentration, water content, combustible material content, chlorine content, pH level, and temperature. Special Provision 252 would also outline criteria that ammonium nitrate solutions must meet to be excepted from regulation. The characteristics outlined in part (1) of Special Provision 252 reflect the existing requirements for transport of UN2426 in the Agreements Concerning the International Carriage of Dangerous Goods by Rail (RID) and by Road (ADR) and the IMDG Code. Given that these standards for transportation of

UN2426 are already recognized in the RID/ADR and IMDG Codes, incorporation of Special Provision 252 would provide clarity by bringing these standards directly into the HMR. Adopting these prescriptive requirements would add clarity to the classification of the material by communicating the thresholds above which the material is classified as hazardous. These requirements were also adopted in the 23rd revised edition of the UN Model Regulations to harmonize the transport conditions multimodally. PHMSA expects that adopting this special provision in the HMR will facilitate the movement of these solutions and improve safety by providing additional clarity on the classification of ammonium nitrate solutions.

Special Provision 328

Special Provision 328 instructs shippers on how to describe fuel cell systems containing lithium metal or lithium ion batteries. PHMSA proposes to make Special Provision 328 applicable to sodium ion batteries that are a component of a fuel cell system. Currently, the special provision only addresses lithium ion batteries and lithium metal batteries that are components of fuel cell systems. PHMSA expects this revision will help to ensure that fuel cell systems with sodium ion batteries are properly classified and that their hazards are properly communicated. Further, this revision harmonizes the HMR with the UN Model Regulations and ICAO Technical Instructions for the adoption of new provisions for sodium ion batteries.

Special Provision 360

Special Provision 360, which is assigned to “UN3091, Lithium metal batteries contained in equipment” and “UN3481, Lithium ion batteries contained in equipment,” currently indicates that vehicles powered solely by lithium batteries must be transported as “UN3171, Battery-powered vehicle.” This special provision serves to clarify that these batteries should be classified as “UN3171, Battery-powered vehicle,” rather than “UN3091, Lithium metal batteries contained in equipment,” or “UN3481, Lithium ion batteries contained in equipment,” if the battery provides motive power for a vehicle. As discussed in the amendments to the HMT (see the Section-by-Section Review in Section 172.101), in light of PHMSA’s proposal to add new entries specifically for vehicles powered by lithium ion batteries, lithium metal batteries, and sodium ion batteries to

the HMT, PHMSA proposes to amend Special Provision 360 to stipulate that vehicles powered by these batteries must be assigned to “UN3556, Vehicle, lithium ion battery powered,” “UN3557, Vehicle, lithium metal battery powered,” or “UN3558, Vehicle, sodium ion battery powered,” respectively. This proposal aligns with the proposed amendment to Special Provision 134 (discussed above). PHMSA expects that these changes will enhance safety by facilitating the proper classification of these vehicles. PHMSA does not anticipate there will be any costs associated with this clarification as shippers would be provided time to exhaust stocks of existing markings or labels with the currently used PSN.

Special Provision 365

PHMSA proposes to modify Special Provision 365 to include a reference to the proposed new HMT entry “UN3554, Gallium contained in manufactured articles,” and to assign this special provision to “UN2803, Gallium.” Currently, Special Provision 365 is assigned to “UN2809, Mercury,” which provides instructions to facilitate proper classification of mercury containing articles by directing users to “UN3506, Mercury contained in manufactured articles” and its associated provisions rather than UN2809, which is for elemental mercury. PHMSA proposes to amend the special provision to provide the same clarification for gallium by adding a reference to “UN3554, Gallium contained in manufactured articles,” and assigning it to the UN entry for elemental gallium, “UN2803.” PHMSA expects that this change will facilitate the transport of articles and manufactured items containing gallium and prevent avoidable costs to shippers. PHMSA expects that this will ensure these items are transported under the appropriate proper shipping name and that they will not be packaged and transported in accordance with the elemental gallium (UN2803) provisions for which there are fewer exceptions.

Special Provision 371

PHMSA proposes to revise Special Provision 371 by removing the requirement to follow the witness screen setup requirements provided in paragraph 16.6.1.3.5 of the UN Manual of Tests and Criteria, which conflicts with an exception from the requirement to have a witness screen as specified in 16.6.1.2(g). Special Provision 371 is assigned to “UN3164, Articles, pressurized pneumatic or hydraulic containing non-flammable gas,” and contains provisions to determine whether articles containing a small

pressure receptacle with a release device can be transported under the entry “UN3164, Articles, pressurized pneumatic or hydraulic containing non-flammable gas.” Paragraph (a)(6) in Special Provision 371 requires an external fire (bonfire) test that follows the provisions of paragraph 16.6.1.2 (but specifically excepts paragraph (g)), as well as the provisions of 16.6.1.3.1 through 16.6.1.3.6, 16.6.1.3.7(b), and 16.6.1.3.8 of the UN Manual of Tests and Criteria. The requirement to follow 16.6.1.3.5, which outlines how to erect and place witness screens, conflicts with the exception from the requirement to have a witness screen, as provided in letter (g) of paragraph 16.6.1.2. To resolve that conflict, the UNSCOE removed the requirements to follow 16.6.1.3.5. PHMSA agrees with this correction and expects that it will facilitate the proper testing and classification of these materials.

Special Provision 379

Special Provision 379 provides conditions for exception from full regulation under the HMR for anhydrous ammonia adsorbed or absorbed on a solid contained in ammonia dispensing systems or receptacles intended to form part of such systems. Among these conditions, Special Provision 379 requires that receptacles containing adsorbed or absorbed ammonia must be made of a material compatible with ammonia as specified in ISO 11114–1:2012(E), “Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials,” and an addendum published in 2017, ISO 11114–1:2012/Amd 1:2017(E). PHMSA proposes to revise Special Provision 379 to require receptacles to be made of compatible material as specified in updated ISO 11114–1:2020(E). This document was updated as part of ISO’s regular periodic review and adopted for reference in the 23rd revised edition of the UN Model Regulations. PHMSA expects the use of these updated documents would allow safe transport of a wider variety of gases in newly developed types of metallic cylinders and valves without compromising safety.

Special Provision 389

Special Provision 389 provides packaging instructions and hazard communication requirements for “UN3536, Lithium batteries installed in cargo transport unit *lithium ion batteries* or *lithium metal batteries*, 9.” PHMSA proposes to revise this special provision to provide clarity regarding the emergency response information that

accompanies shipments of UN3536. Specifically, PHMSA proposes that the emergency response information must specifically identify the predominant type of energy storage battery installed in the unit (e.g., lithium ion batteries) and provide information on immediate methods for handling fires that may take place in these units.

On May 11, 2020, PHMSA published final rule HM-215O—a previous iteration of our recurring biennial rulemaking series to maintain harmonization with international regulations and standards.²² One of the amendments finalized in HM-215O adopted a new entry in the HMT for the transportation of lithium battery energy storage systems that are transported in the form of a cargo transport unit. UN3536, Lithium batteries installed in cargo transport unit *lithium ion batteries or lithium metal batteries*, 9” is intended to facilitate the transportation of large-scale battery energy storage systems. These devices are often used to provide electrical power in harsh, “off-grid” locations, or as part of an electrical utility facility that stores energy for subsequent use in the electrical grid.²³ PHMSA’s understanding is that shipments assigned UN3536 are for systems that primarily contain rechargeable lithium ion batteries as the means of energy storage.²⁴ PHMSA seeks comment on our understanding of the types of lithium batteries transported using the UN3536 entry.

Currently, the required portion of the proper shipping name for UN3536—Lithium batteries installed in cargo transport unit—does not distinguish between lithium ion and lithium metal batteries. Instead, this distinction is made through italicized text in the HMT, which is not required to appear on the shipping paper or emergency response information. PHMSA’s Emergency Response Guidebook (ERG), a resource for use during the initial phase of a transport incident involving hazardous materials, provides differing guidance for fires involving lithium ion and lithium metal batteries. The ERG recommends applying water to a lithium ion battery fire to cool surrounding cells, while the ERG indicates that water and foam *should*

not (emphasis added) be applied to a lithium metal battery fire. The entry in the ERG for UN3536 directs the reader to different guide pages depending on the type of battery used in the system—i.e., Guide 147, if the cargo transport unit contains lithium ion batteries, or Guide 138, if the cargo transport unit contains lithium metal batteries.²⁵ Furthermore, a vehicle transporting UN3536 is required to carry emergency response information (ERI) with the shipping paper that can be used in the mitigation of an incident involving UN3536, including immediate methods to handle fires.²⁶ This information must provide the proper instructions for emergency response for the specific type of lithium battery technology contained in the cargo transport unit.

A July 2024 incident in Baker, California, involving a motor vehicle transporting UN3536 and resulting in a fire, demonstrates the importance of providing accurate emergency response information. PHMSA observed that the information contained in the proper shipping name and the ERG guidance created confusion for emergency responders in an accident scenario involving the transportation of a battery energy storage system.²⁷ In particular, the UN identification (ID) number displayed on the cargo transport unit and the mandatory information from the shipping paper (i.e., UN3536, Lithium batteries installed in cargo transport unit) did not indicate whether the cargo transport unit contained lithium ion batteries or lithium metal batteries. Emergency responders were unclear with respect to immediate measures to mitigate the incident due to uncertainty on whether or not they should apply water during the initial stages of the fire. PHMSA is concerned that similar situations may reoccur during the initial response to future incidents involving UN3536, leading to a reduction in emergency response effectiveness, and increased risks to persons, property, and the environment.

PHMSA proposes to clarify the requirements for the ERI that accompanies the shipment of UN3536 to improve emergency response. Specifically, PHMSA proposes to revise Special Provision 389 to state that the ERI that accompanies the shipment must identify the predominant type of batteries in the cargo transport unit (i.e., lithium ion or metal batteries) and

provide specific instructions that can be used in the mitigation of an incident, including a fire, involving the unit. PHMSA also proposes an editorial revision to create a paragraph structure for Special Provision 389 to clarify for the reader. PHMSA does not anticipate there will be any costs associated with this clarification, which aligns with existing emergency response information requirements (see § 172.602(a)). PHMSA expects this revision will result in benefits through increased compliance with the existing requirement, which will result in decreased risks to emergency responders’ personal safety, and an improved ability to identify and to apply the correct emergency response actions during an incident. PHMSA seeks comment on these expectations.

Separately, PHMSA intends to work with the UNSCOE to pursue internationally harmonized changes to the HMT to create separate UN ID number and proper shipping name entries for cargo transport units containing lithium ion or lithium metal, as well as a new entry for cargo transport units containing sodium ion batteries to improve hazard communication for these energy storage systems. Following the completion of that work, PHMSA will consider—in a future separate rulemaking—revising the HMT to harmonize with those changes to improve emergency response without impeding international transportation of these devices. Until more specific proper shipping names and UN numbers are adopted to reflect predominant battery (i.e., lithium metal or lithium ion) in cargo transport units specifically, PHMSA intends to consider the predominant battery to be the battery that provides electrical power when the container is in use and supplying power to the grid. PHMSA’s understanding is that typically the main source of power for these units is a lithium ion battery because these battery types may be recharged which allows them to be used more than once.

Special Provision 400

PHMSA proposes to add a new Special Provision 400 and to assign it to the following new HMT entries: “UN3551, Sodium ion batteries *with organic electrolyte*,” “UN3552, Sodium ion batteries contained in equipment *with organic electrolyte*,” and “UN3552, Sodium ion batteries packed with equipment, *with organic electrolyte*.” This special provision will allow shippers to offer sodium ion batteries for transportation other than by air without being further subject to requirements of the HMR if certain

²² 85 FR 27810 (May 11, 2020).

²³ U.S. Energy Information Administration, *Electricity explains—Energy storage for electricity generation* (Last accessed Nov. 19, 2025), available at: <https://www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php>.

²⁴ U.S. Dept. of Energy, *U.S. DOE Energy Storage Handbook* (last accessed November 19, 2025), available at: <https://www.sandia.gov/ess/publications/doe-oe-resources/eshb>.

²⁵ PHMSA, *Emergency Response Guidebook 2024*, available at: <https://www.phmsa.dot.gov/training/hazmat/erg/erg2024-pdf-accessible-english>.

²⁶ 49 CFR part 172, subpart G.

²⁷ Caltrans, *Caltrans Statement on San Bernardino County I-15 Fire*, available at: <https://dot.ca.gov/news-releases/news-release-2024-027>.

conditions are met. A similar special provision was adopted in the 23rd revised edition of the UN Model Regulations and Amendment 42–24 of the IMDG Code. As discussed in § 172.101 of the Section-by-Section Review, sodium ion batteries, unlike lithium ion batteries, can be discharged to zero volts without affecting the performance of the cell. This means batteries using sodium ion technology can be stored and transported in a completely discharged state, posing no risk from electrical energy. For that reason, PHMSA believes that adding this special provision to provide an exception from all other HMR requirements (except when transported by air), given that certain conditions are still in place, is appropriate and will maintain safety during transportation of these batteries.

At the 29th meeting of the ICAO DGP, the addition of this special provision to the 23rd revised edition of the UN Model Regulations was discussed but ultimately not adopted into the 2025–2026 ICAO Technical Instructions. The DGP stated that it could be confusing to require a battery mark on the packaging, which could lead to disruptions in the acceptance process. The DGP also stated that it would be difficult for anyone other than the manufacturer to know the other hazardous materials that are components of the battery, and to comply with the condition of the special provision that requires the components to be authorized as limited quantities. Therefore, PHMSA proposes to make this special provision authorized for all modes of transportation except for air.

For modes other than air transportation, Special Provision 400 will instruct those offering sodium ion cells and batteries, including those packed with, or contained in, equipment, that those cells and batteries will not be subject to the HMR if: (1) they are short-circuited to a point that they contain no electrical energy; (2) they meet some of the general design criteria for batteries in § 173.185(a); (3) the package is marked with the battery mark; (4) the package, except for cells or batteries contained in equipment, is capable of withstanding a drop test; (5) the cells and batteries contained in equipment are protected from damage; and (6) the components of the battery must be authorized as limited quantities.

Special Provision 401

PHMSA proposes to add a new Special Provision 401, which would provide instructions on the use of sodium ion battery related proper shipping names. PHMSA proposes to

assign Special Provision 401 to the following HMT entries:

- “UN2795, Batteries, wet, filled with alkali, electric storage”
- “UN3292, Batteries, containing metallic sodium or sodium alloy”
- “UN3292, Cells, containing metallic sodium or sodium alloy”
- “UN3551, Sodium ion batteries with organic electrolyte”
- “UN3552, Sodium ion batteries contained in equipment with organic electrolyte”
- “UN3552, Sodium ion batteries packed with equipment, with organic electrolyte”

This same special provision was added to the 23rd edition of the UN Model Regulations and the 2025–2026 ICAO Technical Instructions following the addition of new entries for sodium ion batteries. Special Provision 401 is expected to assist in determining the appropriate proper shipping name given that there are now six possible shipping names for batteries that contain different electrolyte chemistries. The electrolyte chemistry used contributes to the battery and cell hazards, and therefore different packaging methods and hazard communication are required. PHMSA does not expect adding this special provision will impose additional costs, and that it will help shippers to determine the appropriate provisions applicable to the batteries they are intending to transport.

Special Provision 402

PHMSA proposes to introduce a new special provision, Special Provision 402, assigned to “UN1010, Butadienes and Hydrocarbon mixture, stabilized containing more than 20 percent butadienes.” This special provision would specify required conditions for transport under this entry, such as a specific vapor pressure which must not exceed 1.1 MPa (11 bar) and a density at 50 °C not lower than 0.525 kg/l at 70 °C. This new special provision adds requirements to increase safety and ensure stability during transportation of mixtures containing butadiene. The conditions outlined are in line with the test pressure and maximum permissible mass contents per liter of capacity for pressure receptacles and tanks, and are the basis for the markings of the receptacles and the tanks. PHMSA expects this change to improve safety and provide clarity and consistency for the description and classification of butadienes and hydrocarbon mixtures.

Special Provision 406

PHMSA proposes to add a new Special Provision 406 assigned to

“UN1006, Argon,” “UN1013, Carbon dioxide,” “UN1046, Helium,” and “UN1066, Nitrogen.” This special provision would allow these materials to be transported, except by air, in the appropriate authorized DOT specification cylinders and UN pressure receptacles as a limited quantity material in quantities not more than 1.0 L (34 fluid ounces) per package. The packagings are further restricted by a maximum test pressure-capacity product not to exceed 152 bar liter (78 psig·ft³)—i.e., the product of the size (capacity) of the packaging multiplied by the test pressure, cannot exceed 152 bar liters. The Division 2.2 gases assigned to this special provision would not be allowed to be packed together (in the same package) with other hazardous materials.

This proposed amendment would harmonize the HMR with the 23rd revised edition of the UN Model Regulations, which includes this special provision (i.e., 406) for limited quantity transport of these four Division 2.2 non-flammable, non-poisonous compressed gases. Prior to the addition of this special provision to the UN Model Regulations, to be transported as a limited quantity, these gases were limited to quantities not exceeding 120 ml (about four fluid ounces) per inner packaging. The HMR currently includes this limited quantity provision for compressed gases—that are not defined as aerosols—in § 173.306(a)(1). The change to the UN Model Regulations was based on and supported by past experience of safe shipments of these gases in accordance with regulations adopted by European countries (i.e., ADR) in volumes exceeding 120 ml and the implementation of special permits with similar provisions issued by PHMSA.²⁸ The rationale behind limited quantity provisions, which provide exceptions for certain hazardous materials, is that when appropriately packed in lesser quantities, these materials pose a lower risk in transport than the same hazardous materials packed in larger quantities. As a result of that reduced risk, they are afforded some relief from general transportation requirements such as hazard labels. When transported as a limited quantity in accordance with proposed Special Provision 406, these hazardous

²⁸ DOT–SP 20796 and DOT–SP 20936. UNECE, *Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals—ST/SG/AC.10/C.3/2022/26 Increase of the limited quantity volume for Division 2.2 compress gases* (June 27–July 6, 2022), available at: <https://unece.org/sites/default/files/2022-04/ST-SG-AC.10-C.3-2022-26e.pdf>.

materials would be excepted from labeling, placarding, and shipping papers. The DGP determined that the special provision as adopted in the UN Model Regulations would not be of any substantial value for adoption for air transportation under the ICAO Technical Instructions because, though allowed to be transported in greater quantities as limited quantity material, they would still be subject to marking, labeling, and shipping papers. PHMSA agrees and proposes to exclude the use of this new special provision for air transport specifically. In addition, PHMSA intends to clarify that this provision does not provide shippers with an alternative classification for cylinders intended to be used as fire extinguishers that would otherwise be described and classified as “UN1044, Fire extinguishers.”

This proposed amendment would also respond to a petition for rulemaking, P-1974, submitted by Hazmat Safety Consulting.²⁹ PHMSA expects that this proposed amendment will facilitate the transport of important commercial goods that include small cylinders of inert gases. In addition, PHMSA expects that this change will allow domestic sellers to capture economies of scale by offering consumers compressed gas products in larger size options without additional regulatory burden.

Special Provision 408

PHMSA proposes to add a new Special Provision 408 assigned to proposed revised “UN1835 Tetramethylammonium hydroxide aqueous solution,” PG II and III, and new “UN3560, Tetramethylammonium hydroxide aqueous solution.” The special provision would limit the use of these amended HMT entries to only aqueous solutions made of water, TMAH, and no more than one percent of other constituents. The special provision would also provide instruction that for other formulations containing TMAH, the material must be described using an alternative appropriate generic or n.o.s. HMT entry, except that formulations containing (1) a surfactant in concentration less than one percent and with not less than 8.75 percent TMAH must be described using “UN2927, Toxic liquids, corrosive, organic, n.o.s., 6.1, PG I;” or (2) containing a surfactant in concentration less than one percent and with more than 2.38 percent but less than 8.75 percent TMAH must be described using “UN2927, Toxic liquids, corrosive,

organic, n.o.s., 6.1, PG II.” PHMSA expects that Special Provision 408 will increase safety by providing clearer instructions for appropriate selection of HMT for solutions containing TMAH, which will ensure the hazards of the material are properly communicated, and appropriate authorized packaging and modal transport requirements are maintained.

Special Provision 409

PHMSA proposes to add a new Special Provision 409 assigned to proposed revised “UN1835 Tetramethylammonium hydroxide aqueous solution,” PG II and III; revised “UN3423, Tetramethylammonium hydroxide, solid;” and new “UN3560, Tetramethylammonium hydroxide aqueous solution.” Special Provision 409 would allow shipments of TMAH materials to continue to be transported in accordance with the HMR requirements prior to the publication of a final rule until December 31, 2026. This special provision provides a delayed compliance date that would allow time for shippers and carriers to adjust to the revisions made to the TMAH HMT entries and associated requirements.

Special Provision A54

Special Provision A54 states that, notwithstanding the quantity limits in column (9B) of the HMT, lithium batteries (including those packed with, or contained in, equipment) may exceed a mass of 35 kg (77 lbs.) on cargo aircraft if they otherwise meet the requirements of § 173.185 and the Associate Administrator provides an approval prior to shipment.

At the 29th meeting of the ICAO DGP, the DGP adopted revisions to Special Provision A99 in the 2025–2026 ICAO Technical Instructions, which has the same requirements as Special Provision A54 in the HMR. These revisions applied the special provision to the new entries for sodium ion batteries. This is consistent with other provisions being adopted that regulate sodium ion batteries in much the same manner as lithium batteries based on their similar applications and similar hazards present during transportation. To make this special provision applicable to sodium ion batteries, PHMSA proposes to amend the special provision to reference both sodium ion batteries and lithium batteries. In addition, PHMSA proposes to assign Special Provision A54 to the following new entries: “UN3551, Sodium ion batteries with organic electrolyte,” “UN3552, Sodium ion batteries contained in equipment with organic electrolyte,” and “UN3552,

Sodium ion batteries packed with equipment, with organic electrolyte.” This revision will harmonize the HMR with the UN Model Regulations and the adoption of provisions for sodium ion batteries.

Special Provision A100

Special Provision A100 is assigned to “UN3480, Lithium ion batteries” and prescribes state-of-charge requirements. Currently, this special provision states that lithium ion cells and batteries transported by air must be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity. In addition, lithium ion cells and batteries at a state-of-charge greater than 30 percent of their rated capacity may only be transported under conditions as approved by the Associate Administrator. PHMSA proposes to extend applicability of this state-of-charge requirement by assigning this special provision to additional lithium ion battery entries on the HMT and to revise this special provision to clarify its applicability. In addition, PHMSA proposes to apply this provision to new HMT entries for sodium ion batteries and vehicles powered by batteries. These changes are consistent with revisions in the 2025–2026 ICAO Technical Instructions.

Specifically, PHMSA proposes to assign Special Provision A100 to the following entries:

- “UN3481, Lithium ion batteries contained in equipment *including lithium ion polymer batteries*”
- “UN3481, Lithium ion batteries packed with equipment *including lithium ion polymer batteries*”
- “UN3551, Sodium ion batteries *with organic electrolyte*”
- “UN3552, Sodium ion batteries contained in equipment *with organic electrolyte*”
- “UN3552, Sodium ion batteries packed with equipment, *with organic electrolyte*”
- “UN3556, Vehicle, lithium ion battery powered”
- “UN3557, Vehicle, lithium metal battery powered”
- “UN3558, Vehicle, sodium ion battery powered”

At the 29th meeting of the ICAO DGP, an amendment was considered that would, under certain conditions, extend the existing provision in A100 to lithium ion batteries packed with, or contained in, equipment (UN3481); vehicles powered by lithium ion, lithium metal, or sodium ion batteries; and sodium ion batteries and sodium ion batteries packed with, or contained in, equipment. The DGP Working Group

²⁹ Regulations.gov, PHMSA–2024–0204–P–1794, <https://www.regulations.gov/docket/PHMSA-2024-0204/document>.

on Energy Storage Devices arrived at this decision based on an assessment and safety risk analysis focused on preventing losses due to incidents involving lithium batteries. The DGP Working Group observed during data collection that between 2017 and 2023 there was a decline in transportation incidents involving “UN3480, Lithium ion batteries.” The DGP Working Group hypothesized that the reduction in incidents was due to both the ban on lithium ion batteries on passenger aircraft and the requirement for lithium ion batteries to be offered for transport at a 30 percent state-of-charge on cargo aircraft. The DGP Working Group stated that incidents involving lithium ion batteries contained in and packed with equipment hit a low in 2020–2021 but have since risen. Data also indicated that the number of shipments of lithium ion batteries contained in and packed with equipment almost doubled between 2015 and 2022. The DGP’s stated goal was to consider whether risks associated with the air transport of lithium ion batteries packed with equipment and contained in equipment were adequately mitigated in consideration of all available information.

The DGP concluded that the risks associated with lithium ion batteries packed with equipment meeting the requirements of the applicable ICAO Technical Instruction packing instructions were not adequately mitigated because, outside of the transportation requirements for small batteries, there were no limits on the energy capacity of the batteries. Testing showed, however, that lithium cells and batteries up to 2.7 Watt-hour (Wh) posed a negligible hazard. Note that the same is true for the requirements of the HMR when shipping lithium ion batteries packed with equipment by air; currently, there are no limits on the Wh rating for lithium cells and batteries not covered by § 173.185(c) exceptions for smaller lithium cells and batteries. Therefore, the DGP added a specific condition that for transport of lithium ion batteries packed with equipment—batteries that exceed 2.7 Wh must not exceed a state-of-charge of 30 percent of their rated capacity, while it is only recommended that batteries not exceeding 2.7 Wh be shipped at a 30 percent state-of-charge. PHMSA proposes the same conditional requirements and recommendation in Special Provision A100. By including lithium ion batteries packed with equipment in Special Provision A100, the risks associated with transporting lithium ion batteries are further

mitigated by limiting the energy in these batteries.

For lithium ion batteries contained in equipment, the DGP adopted a recommendation, rather than a requirement, that the lithium ion batteries be shipped at a 30 percent state-of-charge or should be offered for transport at an indicated battery capacity not exceeding 25 percent for several reasons. First, the DGP assumed that lithium ion batteries contained in equipment posed a lesser risk than lithium ion batteries packed with equipment because of the protection the equipment itself provides to the batteries and the assumed smaller energy densities of the lithium batteries. The DGP did not consider the data presented to be relevant or sufficient to justify a requirement. Second, the panel did not consider the risk high enough to warrant mandating something that would significantly impact industry and impede the shipment by air of certain equipment that needed to be shipped fully charged, including life-saving medical devices, large information technology equipment with embedded lithium ion batteries, and military equipment. Lastly, the panel did not consider the presented data to be relevant or sufficient to justify a requirement because incidents were largely due to non-compliant shipments. PHMSA has reviewed the analysis and agrees with the DGP’s conclusions and amendments. Further, PHMSA believes that including the reduced state-of-charge as a recommendation for lithium ion batteries contained in equipment is expected to improve safety by letting shippers know that there is a safety benefit from a reduced risk of thermal runaway at lower states of charge.

For sodium ion batteries, the DGP deemed that the same requirements that apply to lithium ion batteries were appropriate for sodium ion batteries based on the similar risks that the two battery chemistries share. For further discussion on their similarities, see the Section-by-Section in Section 172.101. Consistent with the 2025–2026 ICAO Technical Instructions, PHMSA proposes to extend the 30 percent state-of-charge requirements to sodium ion batteries, similar to the current requirements for lithium ion batteries. However, the ICAO DGP did not adopt this requirement for sodium ion batteries packed with or contained in equipment. Consistent with the 2025–2026 ICAO Technical Instructions, PHMSA is not proposing to adopt the 30 percent state-of-charge requirement for sodium ion batteries packed with, or contained in, equipment, respectively.

PHMSA also proposes to expand this special provision to state clearly that the 30 percent state-of-charge requirement also applies to low production runs and prototypes of lithium ion batteries. This would harmonize the HMR with Special Provision A88 of the 2025–2026 ICAO Technical Instructions. In addition, PHMSA proposes to extend the state-of-charge requirement for low production runs and prototypes to sodium ion batteries, including those transported packed with or contained in equipment, and lithium ion batteries packed with and contained in equipment. This clarification and expansion harmonize the HMR with the 2025–2026 ICAO Technical Instructions.

PHMSA proposes to harmonize further with the ICAO Technical Instructions by extending the 30 percent state-of-charge requirement to sodium ion and lithium ion batteries contained and packed in equipment. PHMSA proposes to state clearly that the 30 percent state-of-charge requirement also applies to lithium ion and sodium batteries, including those packed with and contained in equipment, that are above 35 kg and transported in accordance with Special Provision A54. While not explicitly stated, these large lithium ion batteries have been subject to the state-of-charge requirements, but PHMSA expects this proposed language to improve clarity.

For vehicles powered by lithium ion batteries, lithium metal batteries, and sodium ion batteries, the DGP adopted a state-of-charge requirement for batteries exceeding 100 Wh to be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity or an indicated battery capacity not exceeding 25 percent, and a recommendation for batteries not exceeding 100 Wh to be offered at a state-of-charge not exceeding 30 percent of their rated capacity or an indicated battery capacity not exceeding 25 percent. These limitations were adopted based on there being no limits on the energy capacity of the batteries in the vehicles and the likelihood that a thermal runaway of one of these batteries would have extreme consequences if offered for transport at a full state-of-charge. The DGP decided that a 25 percent driving range would allow for the movement of the vehicle under its own power during loading and unloading, and that 25 percent battery capacity on the vehicle’s fuel gauge was considered equivalent to a 30 to 35 percent state-of-charge of the battery based on input from large automobile manufacturers. The reason that the adopted language in the ICAO Technical Instruction differs for vehicles powered

by larger batteries (*i.e.*, must) versus the vehicles powered by smaller batteries (*i.e.*, should) is that the DGP determined that smaller vehicle batteries pose less risk based on their Wh rating. The DGP further supported making a reduced state-of-charge requirement for larger batteries contained in vehicles, but not for batteries contained in equipment, because there is no limit on the mass of the batteries in vehicles, while there was a limit (*i.e.*, 35 kg) for those contained in equipment.

PHMSA proposes to add text to the end of the special provision to instruct shippers on where they can find information to determine rated capacity to accurately determining the state-of-charge. While this text has been in previous iterations of the ICAO Technical Instructions, PHMSA believes that the addition provides clarity with the number of entries that this special provision now applies. This additional text also reinforces the importance and safety rationale for why these state-of-charge requirements are necessary.

IBC Special Provision—IP8

IP Codes are special provisions provided for in Table 2 of § 172.102(c)(4) and specify requirements pertaining to the use of IBCs for the transport of specific commodities listed in the HMT. PHMSA proposes to amend the text of IP Code, IP8, which is assigned to “UN2672, Ammonia solution, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia.*” Currently, IP8 states that ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2, and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F). PHMSA proposes to amend the language in IP8 to reference an IB code, IB3, which will both reiterate and expand on the authorized IBC types. This expansion will allow for a wider range of packaging types to be used in the transport of ammonia solutions, such as new metal IBCs that have been proven to pass the required tests. This change to IP8 was adopted in the 23rd revised edition of the UN Model Regulations to allow for the expanded use of different IBC types, such as metal IBCs that are currently used for higher concentrations of ammonia solutions. PHMSA expects that this amendment will facilitate the transport of this material without sacrificing safety standards by clarifying that, as long as the required safety tests for the IBCs are

passed, UN2672 material can be transported in a wider variety of IBC types.

PHMSA proposes to correct a publishing error that occurred in an earlier rulemaking, HM–215Q. In that rulemaking, PHMSA added two new IP codes (IP15 and IP22) to Table 2. Due to a publishing error, code IP16 was inadvertently deleted, and the corresponding requirements of the new codes were printed in the wrong column. PHMSA proposes to add IP16 again and correct the formatting in rows IP15 and IP22. IP16 requires an approval from the Associate Administrator for the use of 31A and 31N IBCs for materials that are assigned this IP code on the HMT (*i.e.*, “UN3375, Ammonium nitrate emulsion or Ammonium nitrate suspension or Ammonium nitrate gel, *intermediate for blasting explosives*”). PHMSA expects that this correction will improve safety by ensuring that shippers do not transport these materials in 31A or 31N without PHMSA’s oversight.

Portable Tank Special Provision—TP42

TP codes are special provisions that specify requirements pertaining to the use of IM and UN specification portable tanks for the transport of specific commodities listed in column (7) of the HMT. PHMSA proposes to add a new special provision, TP42, assigned to “UN3482 Alkali metal dispersions, flammable or Alkaline earth metal dispersions, flammable,” and to “UN1391, Alkali metal dispersions or Alkaline earth metal dispersions,” for portable tanks. TP42 would specify that portable tanks are not authorized for metal dispersions comprised of cesium or rubidium. Technological innovations have allowed for alkali metals incorporated in liquid dispersions to be incorporated seamlessly into manufacturing processes and directly printed onto lithium battery anodes, leading to the increased use of such materials being transported as “UN3482, Alkali metal dispersions, flammable or Alkaline earth metal dispersions, flammable” or “UN1391, Alkali metal dispersions or Alkaline earth metal dispersions.” Like cesium and rubidium in their pure forms, metal dispersions containing these materials are not appropriate for transport in portable tanks because they do not do enough to mitigate associated risks, such as exposure to air. Therefore, this change would clarify that not all alkali metals in dispersions are authorized for transport in UN portable tanks. PHMSA expects that this amendment will facilitate the safe transportation of materials that are essential to supporting

the use of additional energy technologies while avoiding the inclusion of cesium and rubidium dispersions.

Section 172.203

Section 172.203 details additional description requirements that must be placed on shipping papers for certain shipments of hazardous materials. Paragraph (d) provides instructions for the description of Class 7 (radioactive) materials. Consistent with provisions adopted in the 2025–2026 ICAO Technical Instructions, PHMSA proposes to require that shipping papers for certain packages containing radioactive material include the dimensions of those packages when transported by air. Currently, when packages are required to bear the “RADIOACTIVE YELLOW–II” or “RADIOACTIVE YELLOW–III” labels, shippers are only required to indicate the transport index assigned to each package as a part of the shipping description. This amendment would further require that when a package bears a “RADIOACTIVE YELLOW–II” or “RADIOACTIVE YELLOW–III” label, the dimensions (including dimensional units of the package, or, when placed in an overpack or freight container, the dimensions of the overpack or freight container, as applicable) be indicated on the shipping paper. Specifically, the dimensions should be shown in the following order: length then width (or diameter, if applicable). The dimensions may be followed by the letters “L,” “W” (or “D”), and “H” when listed in this order. Further, if dimensions are listed in an order other than “length by width (or diameter) by height,” then the letters “L,” “W” (or “D”), and “H” must be listed in association with the individual measurement (*e.g.*, 10” (H) x 7” (W) x 12” (L)).

The DGP adopted this requirement to facilitate loading procedures by ensuring that the required minimum distance from the surface of a package to the nearest surface of a passenger cabin, flight deck partition, or floors is maintained, as specified in §§ 175.701 and 175.702. The DGP also agreed on these changes, in part, because operators and associations of large aircrafts have already required this information on dangerous goods transport documents for many years. PHMSA expects that standardizing the format in which the dimensions of packages overpacks and freight containers are recorded on shipping papers will enhance safety and benefit operators by making necessary information easier to identify and helping streamline preloading activities.

Section 172.315

Section 172.315 outlines the marking requirements for limited quantities. PHMSA proposes to amend § 172.315 by removing two obsolete transitional exceptions in § 172.315 that permitted the use of older limited quantity marking specifications for size and shape until December 31, 2016. PHMSA expects that removing these paragraphs from the HMR will improve consistency and clarity and prevent misunderstanding by eliminating potentially misleading information.

Section 172.322

Section 172.322 outlines the marking requirements for marine pollutants. PHMSA proposes to amend § 172.322 by removing an obsolete transitional exception in paragraph (e)(3) that permitted the use of older marine pollutant marking specifications for size and shape until December 31, 2016. PHMSA expects that removing this paragraph will improve consistency and clarity within the regulations and prevent misunderstanding of this section by eliminating potentially misleading information.

Section 172.447

Section 172.447 prescribes specifications for lithium batteries labels for shipping. To accommodate the new HMT entries for sodium ion batteries and the adoption of provisions similar to lithium batteries, PHMSA proposes to rename this label the “LITHIUM BATTERY or SODIUM ION BATTERY” label. This is consistent with the adoption of sodium ion battery regulations in the 23rd revised edition of the UN Model Regulations and 2025–2026 ICAO Technical Instructions. PHMSA expects that amending this section to identify the label as “LITHIUM BATTERY or SODIUM ION BATTERY” will ensure that shippers are aware of proper hazard communication for the new entries for sodium ion batteries and that the hazards associated with those batteries are clearly communicated during transportation.

Part 173

Section 173.14

Section 173.14 provides exceptions from the HMR for certain devices or equipment, such as data loggers and cargo tracking devices, containing hazardous materials that are in use, or which are intended for use, during transport. These devices or equipment are often powered by hazardous materials, such as lithium batteries or cells. PHMSA added this section in a

prior rulemaking, HM–215P, but only provided limited exceptions for data loggers and cargo tracking devices when transported by air, which only applied to packages equipped with data loggers that contained COVID–19 pharmaceuticals to allow for additional time to gather safety data involving these devices.³⁰

In the 2025–2026 ICAO Technical Instructions, the DGP adopted more expansive provisions for these items. The DGP added an allowance for the transport of data loggers and cargo tracking devices with installed lithium batteries, attached to, or placed in packages, overpacks, or unit load devices on aircraft, under certain provisions. These new provisions address earlier concerns related to the hazards posed by lithium batteries in air transport, specifically related to the energy capacity of the lithium batteries that power these items. In addition, the DGP reviewed requirements developed during a prior working group and engaged with industry to gain an understanding of the size of cells and batteries being used in data loggers and cargo tracking devices, as well as what new technologies may emerge with lithium batteries. The DGP considered the information and adopted limits to the provisions under which the exception would apply including: the data logger or cargo tracking device must be in use or intended for use during transport; the lithium battery must meet UN 38.3 testing; test summary requirements; and quality management program requirements (note, this is not a current HMR requirement) similar to the requirements of Special Provision 388. In addition, a maximum lithium content of one gram for a lithium metal cell or battery and a maximum Watt-hour rating of 20 Wh for lithium ion cell or battery; a limit on the number of data loggers or cargo tracking devices per package; a requirement that these devices be capable of withstanding the shocks and loadings normally encountered during transport; a requirement that the devices must not be capable of generating a dangerous evolution of heat; and a requirement that the devices meet defined standards for electromagnetic radiation to ensure the operation of the device does not interfere with aircraft systems.

PHMSA agrees with the DGP’s findings and proposes to adopt these exceptions for data loggers and cargo tracking devices for items transported by air. However, the DGP did not remove the previously added exceptions

from marking and documentation applicable to shipments of packages containing COVID–19 pharmaceuticals from the 2025–2026 ICAO Technical Instructions. PHMSA seeks comment on whether to retain this provision in the HMR. PHMSA also proposes to rearrange this section by adding this proposed exception in paragraph (b) and moving the provisions for packages containing COVID–19 pharmaceuticals to a new paragraph (c) along with similar provisions to use the exception.

PHMSA expects that these changes will facilitate the transport of hazardous materials and other important goods by air without compromising safety. PHMSA notes that proposed paragraph (b) only provides an exception from the HMR and does not provide an exception for data loggers or cargo tracking devices from complying with other requirements, such as any applicable FAA regulations, FAA Orders, operator requirements, and ULD manufacturer requirements. This amendment will allow shippers and carriers of goods by air to monitor and record environmental conditions for product quality and to monitor product location without compromising safety of air transportation. PHMSA expects the additional costs shippers may incur to take advantage of this expanded regulatory relief to be minimal.

As stated in the HM–215P final rule, PHMSA reiterates that the intent of § 173.14 is not to capture those hazardous materials within active equipment being offered for transportation as part of a consignment (*i.e.*, offered into commerce). For example, this section does not apply to electronic devices (such as hearing aids that may always be powered on as part of their design) that are themselves being offered for transportation as cargo. Rather, these provisions are only applicable to data loggers and cargo tracking devices that are in use and installed, attached to, or placed in packages to provide monitoring and tracking of those packages, or their handling containers, during transit. PHMSA expects that these changes will facilitate the transport of hazardous materials and other important goods by air without compromising safety.

Section 173.59

Section 173.59 provides informational descriptions of terms for explosives. Consistent with provisions adopted in the 23rd revised edition UN Model Regulations, PHMSA proposes to add the term “pyrotechnic substance” in this section. A pyrotechnic substance is an explosive substance designed to produce an effect by heat, light, sound,

³⁰ 87 FR 44944 (Jul. 26, 2022).

gas, or smoke (or a combination thereof) as the result of non-detonative self-sustaining exothermic chemical reactions. A pyrotechnic substance is a subset of explosive substances, and the term is included in the definition of “explosive” in § 173.50(a), which states that an explosive “includes a pyrotechnic substance or article, unless the substance or article is otherwise classed under the provisions of this subchapter.” As currently written, the relationship between explosive substance and pyrotechnic substance is not obvious in the definition itself, which may result in confusion in the application of the definition of pyrotechnic substance. While this section already contains a definition for “Articles, pyrotechnic for technical purposes,” the underlying energetics of these articles are pyrotechnic substances. PHMSA believes adding the specific definition will add clarity to the design and properties of a pyrotechnic substance and prevent confusion in the understanding and application of the term throughout the HMR.

Section 173.62

Section 173.62 provides specific packaging requirements for explosives. PHMSA proposes to revise the Explosives Table in Table 1 to paragraph (b) to add a new entry for fire suppressant dispersing devices classed as Division 1.4S material, specifically, “UN0514,” and assigned Packing Instruction 135, consistent with the new HMT entry as discussed in the Section 172.101 summary above. This proposed revision to the table is consistent with the assignment of Packing Instruction P135 to “UN0514” in the 23rd revised edition of the UN Model Regulations DGL and will provide the specific authorized packaging (*i.e.*, inner packaging and outer packaging). See Section V. § 173.169 summary for a detailed discussion of fire suppressant dispersing devices and proposed requirements for their classification, handling, and transportation.

In addition, in a prior rulemaking, HM–215P, PHMSA added new entries to the HMT for “UN0511, UN0512, and UN0513, Detonators, electronic programmable for blasting,” and assigned § 173.62 for authorized packaging. However, PHMSA did not make corresponding additions of these entries to Table 1 to paragraph (b) (Explosives Table), nor to Table 2 to paragraph (c)(5) (Table of Packing Methods) for Packing Instruction 131, which is assigned to these HMT entries. Consequently, these HMT entries direct users to authorized packaging in § 173.62 without specifying the

packaging requirements that apply to UN0511, UN0512, and UN0513. PHMSA proposes to correct this omission by adding these entries to the table and their corresponding packaging instruction consistent with the UN Model Regulations. Specifically, in the Explosives Table in § 173.62(b), PHMSA proposes to add these three UN numbers and assign them Packing Instruction 131, consistent with assignment of these packaging requirements for “Detonators, electric, for blasting.” Furthermore, in the Table of Packing Methods, for Packing Instruction 131, PHMSA proposes to apply the same packaging requirements that are currently applicable to “UN0030,” “UN0255,” and “UN0456,” Detonators, electric, for blasting” to entries “UN0511,” “UN0512,” and “UN0513.” While these detonators pose the same hazards in transportation, the new entries were added to distinguish electronic detonators from electric detonators, as they have significantly different design characteristics and safety features for end use operators. Because the hazard in transportation is the same, these entries are assigned the same packaging requirements as those currently prescribed for “UN0030,” “UN0255,” “UN0456.”

PHMSA expects that this correction will better facilitate the transport of electronic programmable detonators by specifying the required packaging requirements for these materials.

Section 173.124 and 173.125

Section 173.124 outlines the definitions for Class 4 materials, which include Division 4.1 (flammable solids), Division 4.2 (spontaneously combustible materials), and Division 4.3 (dangerous when wet materials). PHMSA proposes to amend the definition of readily combustible solids in § 173.124(a)(3) by adding language that explicitly states that the criteria for metal powders is also applicable to powders of metal alloys.

Currently, paragraph (a)(3)(iii) of this section defines readily combustible solid materials as “any metal powders that can be ignited and react over the whole length of a sample in 10 minutes or less, when tested in accordance with the UN Manual of Tests and Criteria.” However, the UN Manual of Test and Criteria includes two different criteria for flammability—one for “powdered, granular, or pasty substances or mixtures,” and another for “powders of metal or metal alloys.” In addition, as previously written, some paragraphs related to Test N.1 in the UN Manual of Tests and Criteria and the relevant classification criteria were applicable

only to metal powders, rather than explicitly stating that they should also apply to metal alloys. The UNSCOE identified and corrected this conflict in the 23rd revised edition of the UN Model Regulations by adding text that states that the criteria for metal powders is also applicable to powders of metal alloys.

PHMSA agrees with the UNSCOE’s assessment that this is an editorial oversight, given that powders of metal alloys share the same flammability characteristics as metal powders. Due to the difficulty of extinguishing a fire involving metal powders, (*i.e.*, normal extinguishing agents such as carbon dioxide or water can increase the hazard) special consideration is needed when determining flammability. Therefore, stating that metal powders are powders of metal or metal alloys will ensure both metal powders and powders of metal alloys are appropriately classified using the criteria for metal powders instead of the criteria for “other substances or mixtures.”

In addition, in § 173.125, which outlines the criteria for assigning packing groups to Class 4 materials, PHMSA proposes to amend paragraphs (b)(1) and (b)(2) to replace the phrase, “powders of metals or metal alloys,” with the term, “metal powders.” This change would provide consistency with the newly added definition of metal powders provided in § 173.124. PHMSA expects these amendments will enhance safety by applying the classification criteria for metal powders to powders of metal alloys as opposed to the criteria for other powdered, granular, or pasty substances or mixtures.

Section 173.151

Section 173.151 contains exceptions for Class 4 hazardous materials. In the HM–215Q final rule, PHMSA added “151” in column (8a) of the HMT for “UN3148, Water-reactive liquid, n.o.s.” for authorized transportation exceptions.³¹ PHMSA also revised § 173.151(d) introductory text applying to limited quantities of Division 4.3 (dangerous when wet) material to include both “solids” and “liquids” to reflect accurately that Division 4.3 materials could be either in a solid or liquid state. However, when making these changes, PHMSA inadvertently omitted revisions to paragraphs (d)(1) and (d)(2), which specify authorized combination packaging to address the addition of inner packaging quantity limits for “liquids” to paragraph (d). Therefore, PHMSA proposes to revise

³¹ 89 FR 25434 (Apr. 10, 2024).

paragraphs (d)(1) and (d)(2) to include inner packaging quantity limits for liquid and add the appropriate unit of measurement.

Section 173.162

Section 173.162 contains the packaging requirements and exceptions for gallium and includes limited quantity provisions for gallium contained in manufactured articles or apparatuses. As discussed earlier, PHMSA is proposing to add a new entry on the HMT for gallium contained in manufactured articles (UN3554) (see the Section-by-Section Review in Section 172.101 for discussion of these amendments). In this section, PHMSA proposes to modify paragraph (c), which outlines the provisions for gallium in manufactured articles or apparatuses, to include new packaging requirements and modal specific exceptions. Currently, paragraph (c) provides an exception from the HMR for these articles or apparatuses that contain small amounts of gallium (not more than 100 mg) which are packaged so that the quantity of gallium per package does not exceed one gram. It also states that for transportation by aircraft, such articles and apparatuses must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person, unless specifically excepted by § 175.10, which provides exceptions for passengers, crewmembers, and air operators traveling with hazardous materials by air.

Consistent with changes adopted in the 23rd revised edition of the UN Model Regulations and the 2025–2026 ICAO Technical Instructions, PHMSA proposes to revise the packaging requirements and mode specific exceptions for these articles. Specifically, the changes would provide an exception from the HMR when gallium is contained in manufactured articles and packaged in strong outer packagings that have sealed inner liners or bags of strong leakproof and puncture-resistant material impervious to gallium. This exception is in lieu of more stringent specification packaging as outlined in paragraph (a), which is intended for “UN2803, Gallium.” In addition, these changes would: (1) provide exceptions for transportation by highway, rail, and vessel when the articles contain less than one kg (35.2 ounces) of gallium; (2) provide an exception for transportation by cargo aircraft when less than 15 g of gallium is contained in articles except for lamps, such as thermometers, switches and relays, that are installed as an integral

part of a machine or apparatus; and (3) maintain the exception from the HMR for articles containing under 100 mg (0.0035 ounce) of gallium to be allowed on aircraft, except for lamps, when transported as cargo. PHMSA expects that the addition of these provisions will facilitate the use of gallium in manufactured articles as an alternative to mercury by providing similar regulatory exceptions that provide an equivalent level of safety. PHMSA further expects these modifications to § 173.162(c) will allow for consistency with international regulations and provide clear guidelines for the safe transportation of gallium contained in articles. PHMSA expects the new exceptions provided in this amendment, which provide regulatory burden relief, will provide cost savings for domestic shippers that transport articles that contain gallium.

Lastly, PHMSA proposes to amend the header in § 173.162, which currently reads “Gallium,” to read “Gallium (metallic and articles containing gallium).” This editorial change would provide clear direction that requirements for articles containing gallium (UN3554) and elemental gallium (UN2803) can both be found in this section.

Section 173.169

PHMSA proposes to add a new section, § 173.169, primarily detailing requirements for the classification, handling, and transport of fire suppressant dispersing devices as a Class 9 material—*i.e.*, those devices intended to be described and transported as “UN3559, Fire suppressant dispersing devices.” This section will also provide instruction that materials intended to be transported as fire suppressant dispersing devices must meet certain criteria for Division 1.4S explosive material and must be classed and described as “UN0514, Fire suppressant dispersing devices, 1.4S” and transported accordingly if not also meeting the criteria for classification as Class 9. The introductory language of the section will define fire suppressant dispersing devices as articles containing a pyrotechnic substance that are intended to disperse a fire extinguishing agent when activated and which do not contain any other hazardous materials. As an example, the fire extinguishing agent could be an aerosol. The articles, as packaged for transportation, must meet criteria for Division 1.4S explosive material in accordance with test series 6(c) of the Manual of Tests and Criteria.

PHMSA also proposes additional conditions under which the article may

be classed as Class 9. Specifically, PHMSA proposes that for a fire suppressant dispersing device to be classed as a Class 9 miscellaneous hazardous material: (1) it must meet criteria for being excluded from Class 1 consistent with section 2.1.3.6.4(b), (c) and (d) of the UN Model Regulations; (2) it must meet criteria such that when activated as packaged during transportation, temperatures on the outside surface of the package must not exceed 200 °C; and (3) the suppressant used in the device must be deemed safe for normally occupied spaces consistent with international or regional standards (*e.g.*, NFPA 2010, Standard for Fixed Aerosol Fire Extinguishing Systems).³² PHMSA also proposes to require that the article be transported with either the means of activation removed or equipped with at least two independent means to prevent accidental activation. Lastly, PHMSA proposes to include packaging requirements when classified as a Division 1.4S article (*i.e.*, a cross-reference to § 173.62) and Class 9 (*i.e.*, certain PG III performance level packagings).

To recap the proposed changes, for a device to be classed and described as a fire suppressant dispersing device, PHMSA proposes that it must be examined by a laboratory authorized by PHMSA to perform examination and testing of explosives. For a fire suppressant dispersing device described as “UN0514, Fire suppressant dispersing devices, 1.4S,” the article, as packaged for transportation, must meet criteria for Division 1.4S explosive material in accordance with test series 6(c) of the Manual of Tests and Criteria, and, to be described as “UN3559, Fire suppressant dispersing devices, Class 9,” the article must first meet criteria for Division 1.4S, but must also be examined for the additional performance criteria discussed above, all performed by a PHMSA-authorized explosives test lab. Both entries will then follow the normal process for examination, classification, and approval of a new explosive in accordance with § 173.56, where a recommended shipping description, division, and compatibility group is submitted to PHMSA for approval and, should PHMSA agree that the criteria are met, it will be provided an EX approval and assigned an EX number.

Fire suppressant dispersing devices have numerous practical applications. Initially, they were primarily used in

³² Means a material which presents a hazard during transportation, but which does not meet the definition of any other hazard class; Occupied spaces, in this context, are those which are occupied by persons.

motive applications such as trains and vessels. However, because of their safety record and effectiveness, their applications have broadened to use in buildings and industrial facilities mostly to protect highly valued electronic equipment. They are used in facilities ranging from wind turbines to buildings with high volume electronic equipment such as server rooms. The traditional sprinkler system, while still effective in firefighting, is likely to cause extensive damage to property not directly involved in a fire yet still exposed to water used to fight a fire. Fire suppressant dispersing devices provide an alternative means of firefighting without associated negative property and environmental impacts. Manufacturers of these devices have indicated that another useful application is in suppressing lithium battery fires, and thus these devices are used more frequently in things like battery energy storage systems and charging systems like electric bike and scooter charging facilities.³³ Devices that perform the same function, but that do not meet the classification criteria for “UN3268, Safety devices, *electrically initiated*, 9,” are typically classified as “UN0432, Articles, pyrotechnic for technical purposes, 1.4S” for lack of a more appropriate shipping description. According to industry, many of these devices have been safely shipped as cargo under the current system of approvals both domestically and internationally either as Class 9 or unregulated. Yet, with increasing numbers of these devices being transported as cargo and used for fire protection in fixed facilities, uncertainty remains under the currently available system for classifying and describing the devices for transportation. PHMSA expects that adopting the changes proposed in this notice (e.g., adopting the new HMT entries) and including this new section for classifying, packaging, and handling fire suppressant dispersing devices will positively impact the safe transport of these articles and facilitate their broader use in the economy for protection of persons and property.

Section 173.185

Currently, § 173.185 prescribes requirements for classification, packaging, and exceptions for lithium cells and batteries. As discussed previously in § 172.101 of the Section-by-Section Review, the 23rd revised

edition of the UN Model Regulations adopted provisions for the regulation of sodium ion batteries that mirror the requirements for lithium batteries due to their similar chemistries and similar safety risks. PHMSA proposes to harmonize with the UN Model Regulations by applying the provisions in § 173.185 for lithium batteries to sodium ion batteries. This will ensure that the new entries for sodium ion batteries meet the same packaging requirements as those that currently apply to entries for lithium batteries.

Specifically, in § 173.185(a)(3), PHMSA proposes to extend the test summary provisions that currently apply to lithium cells and batteries and button cells installed in equipment to sodium ion cells and batteries. With this change, manufacturers and subsequent distributors of sodium ion cells and batteries must make a test summary available, but sodium ion button cells installed in equipment would be excepted. PHMSA notes that neither the UNSCOE nor the ICAO DGP have proposed adopting the exception from the test summary provisions for sodium ion button cells and batteries. However, PHMSA finds that adopting this change at this time is a logical outcome of the amendments adopted by these working groups thus far. While PHMSA expects that this proposed change would reduce the regulatory burden for industry, PHMSA requests comments regarding whether this proposed amendment would cause unintended burdens for the regulated community or emergency responders.

In addition, PHMSA proposes amending the heading of this section to reference sodium ion cells and batteries, amending §§ 173.185(b)(6) and (c)(4), and adopting changes to the requirements for the use of large packagings for cells and batteries. In § 173.185(b)(6), except for transportation by aircraft, certain large packagings are authorized for single lithium batteries as well as single items of equipment that contain lithium batteries. PHMSA proposes to amend paragraph (b)(6) to authorize these large packagings for not only single batteries and single pieces of equipment, but for multiple large cells, large batteries, and pieces of equipment that contain large cells or large batteries. PHMSA also proposes to amend paragraph (b)(6) to require that cells, batteries, and pieces of equipment that are packed in the authorized rigid large packagings must be placed in inner packagings or separated by other means that would protect the cells, batteries, or pieces of equipment against damage that could occur under normal transportation conditions.

The UN Model Regulations have adopted these new allowances and packaging requirements for multiple reasons. First, allowing multiple cells, batteries, and pieces of equipment addresses the already occurring rapid growth and advancements of the lithium battery industry, which includes “giga-factories” constructed in or planned to be constructed in many parts of the world, each of which will have the capability of producing billions of lithium ion cells annually. These allowances facilitate the capability to transport larger volumes of batteries from those manufacturing facilities safely. Limiting the use of these large packagings to large cells, large batteries, and pieces of equipment that contain large cells or large batteries, as defined in 38.3.2.3 of the UN Manual of Tests and Criteria, will in effect limit the number of cells, batteries, or pieces of equipment being transported in these large packagings. Therefore, this will prevent the transportation of potentially thousands of smaller cells and batteries in the large packagings, which could increase the potential for damage to the contents and, therefore, have the potential to result in unsafe conditions. To ensure further the safe transportation of multiple cells, batteries, or pieces of equipment, and to harmonize with international standards, PHMSA proposes that cells, batteries, and equipment be placed in inner packagings or otherwise separated by suitable means (such as trays or dividers) to prevent damage under normal conditions of transport from motion or shifting, contact with other cells or batteries, or from superimposed loads within the large packaging. The use of plastic bags does not satisfy this requirement, as they may not be sufficient to prevent damage to cells or batteries, especially from superimposed loads within the large packaging.

Similar to the other provisions in § 173.185 for lithium batteries, PHMSA proposes to extend this packaging provision to sodium ion cells and batteries and equipment containing sodium ion cells and batteries to ensure their safe transportation when in large packages. This is consistent with applying other requirements for lithium ion batteries to sodium ion batteries based on their similar risk profiles and chemistries.

Section 173.185(c)(3) outlines the requirements for the use of the lithium battery mark. Currently, this mark is required on certain packages that contain lithium cells or batteries, including those that are packed with or contained in equipment. PHMSA proposes to amend this paragraph to

³³ UNECE, *Fire suppression devices that contain a pyrotechnic material* (April 11, 2022), available at: <https://unece.org/sites/default/files/2022-04/ST-SG-AC.10-C.3-2022-25e.pdf>.

extend this marking requirement to certain packages that contain sodium ion cells or batteries. PHMSA also proposes to make a corresponding change the title sentence of this paragraph from “lithium battery mark” to “battery mark.” PHMSA notes that no changes to the marking itself are being made.

Section 173.185(c)(4) provides exceptions for air transportation of smaller lithium cells and batteries packed with, or contained in, equipment. This includes an exception from using UN performance packaging in accordance with the provisions of paragraph (c), an exception that mirrors the provisions of Section II for packing instructions 966, 967, 969, and 970 of the ICAO Technical Instructions. PHMSA proposes to include sodium ion cells and batteries in paragraph (c), which mirrors Section II of packaging instruction 977 and 978 of the ICAO Technical Instructions. In addition, PHMSA proposes to add a new paragraph, § 173.185(c)(4)(v), to mirror a new requirement in the 2025–2026 ICAO Technical Instruction to require packages of smaller lithium and sodium ion cells and batteries packed with, or contained in, equipment to be capable of passing a stack test when excepted from UN performance packaging requirements.

At the 29th meeting of the ICAO DGP, an amendment to add a requirement for packages that were excepted from UN package performance testing to be capable of withstanding a stack test was considered for adoption in the 2025–2026 edition of the ICAO Technical Instructions. The new requirement was adopted for both lithium ion and metal batteries packed with, or contained in, equipment. The 2023–2024 edition of the ICAO Technical Instructions adopted a requirement that packages of lithium ion and metal batteries that were excepted from UN packaging in packing instructions 965 and 968 be capable of withstanding a three-meter stack test for a duration of 24 hours. This requirement was adopted into the HMR with the publication of a previous final rule, HM–215Q, in § 173.185(c)(5), which corresponds to Section IB in ICAO Technical Instructions Packing Instructions 965 and 968. In that final rule, PHMSA agreed with including the stack test for the packages of lithium ion and metal batteries excepted from UN packaging because this was consistent with the requirements for limited quantity packages transported by air in § 173.27(f)(2)(vi). PHMSA also maintained that introducing a stack test would be a preventative safety measure against potential damage to lithium

battery packages from stacking of packages.

At the 29th meeting of the ICAO DGP, in discussing the adoption of the stack test for lithium ion and metal batteries packed with, or contained in, equipment, which are exempt from UN packaging requirements, the DGP stated that adopting these requirements for the 2025–2026 edition of the ICAO Technical Instructions aimed at ensuring packaging is robust enough to prevent damage to the cells or batteries contained within those packages. In their report, the DGP stated that an incident involving mobile phones catching fire on an airport ramp while waiting to be loaded on an aircraft provided further justification for these new requirements. PHMSA agrees that adding the stack test requirement for packages of lithium ion and metal batteries packed with, or contained in, equipment enhances air transportation safety by ensuring additional protection of the batteries in those packages. Therefore, PHMSA proposes to adopt this requirement in new paragraph § 173.185(c)(4)(v). PHMSA also proposes to extend this requirement to sodium ion cells and batteries packed with, or contained in, equipment to ensure the safe transportation of packages of sodium ion batteries packages under similar exceptions. This is consistent with applying other requirements for lithium ion batteries to sodium ion batteries based on their similar risk profiles and chemistries.

Section 173.219

Section 173.219 prescribes the transport conditions and packaging requirements for life-saving appliances. Paragraph (b) of this section provides a list of hazardous materials that a life-saving appliance is permitted to contain, as well as other transport requirements. Among the materials allowed in life-saving appliances are lithium batteries. Paragraph (b) states that life-saving appliances containing lithium batteries must be packed in accordance with § 173.185 and Special Provisions A54 and A101, as applicable. PHMSA proposes to revise this section to state that life-saving appliances may also contain sodium ion batteries where it states that they may contain lithium batteries. Adding sodium ion batteries to this section will ensure that sodium ion batteries that are components of lifesaving appliances are properly packaged for safe handling during transportation and that they comply with applicable special provisions specific to air transportation.

Section 173.220

Section 173.220 prescribes transportation requirements and exceptions for internal combustion engines, vehicles, machinery containing internal combustion engines, battery powered equipment or machinery, and fuel cell-powered equipment or machinery. As previously discussed in the Section-by-Section Review in Section 172.101 of new HMT entries, three new UN identification numbers and proper shipping names are proposed for vehicles powered by lithium ion batteries, lithium metal batteries, and sodium ion batteries (UN3556, UN3557, and UN3558, respectively). PHMSA proposes to make editorial amendments in paragraph (d) of this section to add references to these specific types of battery-powered vehicles.

PHMSA also proposes to revise § 173.220(d) by adding new paragraph (d)(6), which will provide an exception for the new HMT entry “UN3558, Vehicle, sodium ion battery powered.” Section 173.220(d)(6) will allow shippers to offer vehicles powered by sodium ion batteries without being subject to other requirements of the HMR if they contain no other hazardous materials, and the battery is short-circuited in a way that the battery does not contain any electrical energy. A similar provision was adopted in the 23rd revised edition of the UN Model Regulations, Amendment 42–24 of the IMDG Code, and the 2025–26 ICAO Technical Instructions. As discussed in § 172.101 of the Section-by-Section Review, sodium ion batteries, unlike lithium ion batteries, can be discharged to zero volts without affecting the performance of the cell. This means batteries using sodium ion technology can be stored and transported in a completely discharged state, posing no risk from electrical energy. Because of this reduced risk, PHMSA believes that adding § 173.220(d)(6) to provide an exception from all other HMR requirements, given certain conditions are still in place, is appropriate and will maintain safety during transportation of these battery-powered vehicles. PHMSA expects that this change will benefit the regulated community by providing greater clarity on the applicability of this section.

Section 173.225

Section 173.225 prescribes packaging requirements and other provisions for organic peroxides. As a result of new peroxide formulations becoming commercially available, the 23rd revised edition of UN Model Regulations

updated the list of assigned organic peroxides, which provides for formulations of these materials that are authorized for transportation without prior approval. To maintain consistency with the UN Model Regulations, PHMSA proposes to add three new entries and amend a current entry in the Organics Peroxide Table in Table 1 to paragraph (c). PHMSA also proposes to add an authorized IBC type for an organic peroxide already listed in the Organic Peroxide IBC Table in Table 3 to paragraph (e).

Specifically, PHMSA proposes to update the Organic Peroxide Table by adding new entries for “2,5-Dimethyl-2,5-di-(tert-butylperoxy) hexane,” “Dibenzoyl peroxide,” and “Methyl ethyl ketone peroxide(s).” “2,5-Dimethyl-2,5-di-(tert-butylperoxy) hexane” would be listed as “Exempt,” denoting it as a material that is not regulated as an organic peroxide; “Dibenzoyl peroxide” would be identified as “UN3109, Organic peroxide type F, liquid” and assigned packing method OP8; and “Methyl ethyl ketone peroxide(s)” would be identified as “UN3105, Organic peroxide type D, liquid” and assigned packing method OP7. With these changes, PHMSA would also add a new Note 33, and assign it, and Note 5 to the new methyl ethyl ketone peroxide(s) entry, which would specify the required diluent concentrations and limit available oxygen, respectively, for this approved formulation. PHMSA is assigning Note 5, which requires available oxygen to be greater than nine percent, rather than harmonizing with the UN Model Regulations for consistency with applying assignment of Note 5 to other methyl ethyl ketone peroxides in the table. PHMSA requests comment on this approach and potential impacts. PHMSA expects that adding available peroxide formulations will benefit American manufacturers by permitting the transportation of these materials without the need for prior approval while maintaining the HMR’s safety standard for transportation.

PHMSA also proposes to reclassify the existing entry for “Di-2,4-Dichlorobenzoyl peroxide [as a paste with silicone oil],” from “UN3106, Organic peroxide type D, solid” to “UN3104, Organic peroxide type C, solid.” With this change, the packing method would also be modified from OP7 to OP5. These changes were adopted based on new test data regarding deflagration properties of these organic peroxides. The UNSCOE determined these materials should undergo deflagration testing to be properly classified and assigned the

appropriate packing instructions. As a result of these additional tests, it was determined that “Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil]” should be reclassified from a Type D to the more stringent classification of Type C organic peroxide. PHMSA expects that the additional packaging requirements associated with this classification change will improve safety of transportation of these organic peroxides while facilitating the continued transport of organic peroxides.

Lastly, PHMSA proposes to add 31HA1 IBCs as an additional authorized packaging type for “Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52 percent, stable dispersion, in water” in the Organic Peroxide IBC Table. Currently, a 31A (metal) IBC is the only authorized IBC type for this material, which is inconsistent with the authorizations provided for similar organic peroxide formulations. The UNSCOE corrected this oversight in the 23rd revised edition of the UN Model Regulations by adding 31HA1, which is a composite IBC with a plastic inner receptacle and a steel outer packaging (*i.e.*, casing) as an approved IBC type for this material. PHMSA finds that this is an appropriate packaging and agrees with this addition for this material. PHMSA expects that authorizing the use of a second IBC type will facilitate the transport of this material by providing packaging selection flexibility without compromising safety.

Section 173.232

Section 173.232 outlines the packaging requirements for articles containing hazardous materials. An article is machinery, apparatus, or other device that contains one or more hazardous materials—or residues thereof—that are an integral element of the article, necessary for its functioning, and cannot be removed for the purpose of transport. Articles may contain various types of batteries, including low production run and prototype, and provisions for such articles are outlined in paragraph (b) of this section. Currently, paragraph (b) states that articles containing batteries must meet the requirements of UN Manual of Tests and Criteria, Part III, subsection 38.3. However, this section does not clearly address articles containing low production run and prototype batteries as the requirements for batteries are generally codified in § 173.185. Therefore, PHMSA proposes to amend paragraph (b) to include a direct reference to § 173.185(e), which outlines the requirements and exceptions for low

production run and prototype batteries. This change would clarify that articles containing low production run and prototype batteries qualify for certain exceptions from the testing requirements in the UN Manual of Tests and Criteria, Part III, subsection 38.3. PHMSA expects that removing the burden of additional testing prior to shipment of products containing prototype lithium ion will streamline the product development and testing process, benefitting American manufacturers of these products.

Consistent with other proposed amendments addressing the similar regulation of sodium ion batteries and lithium batteries by international regulations (see the Section-by-Section Review in Section 172.101 for further details), PHMSA proposes provisions to account for sodium ion batteries being used to power different types of articles. With the expected increase in demand for sodium ion batteries as an alternative power source to lithium batteries, sodium ion batteries will be used for many of the same applications, including the powering of different types of articles, as defined in this section. To ensure safe transportation, PHMSA proposes to apply the requirement that currently requires lithium batteries in articles to be of a type proven to meet the testing requirements of the UN Manual of Tests and Criteria, Part III, subsection 38.3, to sodium ion batteries in articles. PHMSA expects these changes to improve safety by providing an additional level of clarity in the regulations.

Section 173.301b

Section 173.301(b) outlines additional general requirements that apply when shipping gases in UN pressure receptacles (*e.g.*, cylinders). Paragraph (a)(2) of this section requires that the gases or gas mixtures be compatible with the UN pressure receptacle and valve materials prescribed for metallic materials in ISO 11114–1:2012(E), *Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials* and its 2017 supplemental amendment, ISO 11114–1:2012/Amd 1:2017(E). In addition, for non-metallic materials, paragraph (a)(2) requires compatibility with ISO 11114–2:2013(E), *Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials*. These documents provide compatibility requirements for the selection of combinations of metallic and non-metallic cylinder and valve materials for use with gas or gas mixtures. To provide uniformity regarding reference standards used

domestically and internationally, PHMSA proposes to revise the compatibility requirements to reference the latest version (third edition) of these documents, ISO 11114–1:2020, *Gas cylinders—Compatibility of cylinder and valve materials with gas contents Part 1: Metallic materials* and ISO 11114–2:2021—*Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials*. These documents were updated as part of ISO's regular periodic review, and the 23rd revised edition of the UN Model Regulations adopted changes that removed references to the previous editions. In addition, for editorial clarity of the HMR and for harmonization with international regulations, including the 23rd revised edition of the UN Model Regulations, PHMSA also proposes to remove references to the earlier editions. PHMSA expects the use of these updated documents would facilitate continued safe transport of gases in metallic cylinders and valves.

Section 173.304b

Section 173.304b prescribes additional requirements for shipment of liquefied compressed gases in UN pressure receptacles. As discussed above, disilane is currently transported under a generic “n.o.s.” shipping description, which the UNSCOE and PHMSA find does not accurately represent the appropriate packaging and shipping requirements for the hazard presented by this material. In this rulemaking, PHMSA proposes to create a new HMT entry, “UN3553, Disilane,” to communicate better the requirements for packaging and shipping this material. To specify appropriate packaging instructions for disilane, PHMSA proposes to add a new paragraph (e) under § 173.304b. The creation of the new HMT entry for disilane was, in part, to outline clearly the prohibition on the transportation of disilane in MEGCs, and this new paragraph will clarify that prohibition. Section 173.312(a)(1) authorizes use of MEGCs for liquefied and non-liquefied compressed gases “unless otherwise specified.” The current commonly used hazardous materials description and UN identification number for disilane, “UN3161, Liquefied gas, flammable, n.o.s. 2.1,” is not restricted from authorized use of MEGCs by a specific provision. The DGL entry for disilane in the latest UN Model Regulations is assigned packing instruction P200 and does not include MEGCs as authorized packaging for shipment of disilane. Consistent with that prohibition, PHMSA proposes to create new

paragraph (e) to specify that MEGCs are not authorized for the shipment of “UN3553, Disilane.” PHMSA expects this change to enhance safety by ensuring that disilane is only transported in appropriate packagings.

Part 175

Section 175.1

Section 175.1 details the purpose, scope, and applicability of the requirements for the carriage of hazardous materials by aircraft in part 175. Paragraph (e) provides a reminder to air carriers that are certificate holders authorized to conduct operations in accordance with 14 CFR part 121 that they must also have a Safety Management System (SMS) in accordance with 14 CFR part 5. This paragraph was added in Final Rule HM–215Q to reiterate and clarify—but not add any additional burden—for part 121 certificate holders of the FAA SMS requirements. In the FAA final rule titled *Safety Management Systems*, the FAA updated the SMS requirements, which included expanding these requirements to certificate holders authorized to conduct operations in accordance with 14 CFR part 135.³⁴ In this NPRM, PHMSA proposes to add a reference to part 135 certificate holders in paragraph (e) to align with the changes in the FAA final rule. PHMSA and the FAA note that this proposal is not intended to impose any additional requirements or revise any timelines beyond what is required by 14 CFR part 5. PHMSA expects that these editorial amendments will enhance the safety of air operations by providing language that is consistent with the requirements under 14 CFR part 5.

Part 176

Section 176.83

Section 176.83 contains the requirements for segregation of hazardous materials on vessels. PHMSA proposes editorial revisions in paragraph (a)(8) that correspond to amendments adopted in Amendment 42–24 of the IMDG Code. To eliminate confusion, the CCC made a clarifying amendment specifying that to be stowed together, materials must not cause combustion or evolution of considerable heat; evolution of flammable, toxic or asphyxiant gases; the formation of corrosive substances; or the formation of unstable substances. PHMSA agrees that the original provision could have been misconstrued and, therefore, proposes to amend the text to clarify that the hazardous materials should not cause

any of the reactions listed. This change would mirror the language found in footnote 2 of § 176.84(b) “Table of provisions,” which provides a clearer communication of the same causal relationship between potential reactions and the conditions that result from those reactions. PHMSA expects that this editorial change will provide clarity and improve understanding of the intent of these stowage requirements.

Section 176.84

Section 176.84 prescribes the meanings and requirements for numbered or alpha-numeric stowage provisions for vessel shipments listed in column (10B) of the § 172.101 HMT. The provisions in § 176.84 are broken down into general stowage provisions, which are defined in the “Table of provisions” in paragraph (b), and the stowage provisions applicable to vessel shipments of Class 1 explosives, which are defined in the table in paragraph (c)(2).

Currently, stowage code 116 states that the cargo space of a vessel must be capable of being opened in an emergency and that, before loading, the crew should consider the need to open hatches in case of fire. Amendment 42–24 of the IMDG Code includes amendments to analogous stowage provisions to clarify that these ventilation requirements also apply to tween and weather deck hatches. PHMSA agrees with these changes and expects that this clarifying language will enhance safety on vessels by specifying that the practicability of opening the tween deck and weather deck hatches must also be considered in the event of an emergency. Moreover, as discussed in the Section-by-Section Review in Section 172.101, PHMSA is proposing to assign stowage code 116 to “UN2067, Ammonium nitrate based fertilizer.” PHMSA expects that this change will improve the safety of vessel transport and provide clarity around the proper stowage of this material.

PHMSA proposes to amend vessel stowage code 156 to address sodium ion batteries that may be shipped because they are damaged, defective, or recalled, or for the purposes of disposal or recycling and apply the same “Category C” stowage requirements that would currently apply for lithium batteries shipped under those same conditions. PHMSA also proposes to add new stowage codes 158, 159, and 160 to this section. Stowage code 158 would indicate that “Cargo transport units shall be shaded from direct sunlight. Packages in cargo transport units shall be stowed to allow for adequate air circulation throughout the cargo.”

³⁴ 89 FR 33068 (Apr. 26, 2024).

Stowage code 159 would indicate that the material should be stowed (or kept) in a cool ventilated place during transport. Lastly, stowage code 160 would indicate that a material must be stowed away from potential sources of ignition. For additional information on these changes see discussion in the Section-by-Section review in Section 172.101, column (10B).

Section 176.905

Section 176.905 outlines the vessel-specific requirements for the stowage of vehicles that are powered by internal combustion engines, fuel cell batteries, or a combination thereof when transported on vessels. PHMSA proposes to add an exception for vehicles powered by sodium ion batteries in paragraph § 176.905(i)(1)(ii). Specifically, and as a part of a larger set of changes throughout the HMR to the provisions for transportation of sodium ion batteries, PHMSA proposes to add a provision that would except vehicles powered solely by a sodium ion battery from the HMR, provided the battery is short-circuited in a way that it does not contain electrical energy. The short-circuiting must be easily identifiable (e.g., busbar between terminals). The proposed addition would clarify that there are exceptions for the newly added sodium ion battery-powered vehicles to the HMR. A similar addition was adopted in Amendment 42–24 to the IMDG Code. PHMSA expects that safety of transportation will be maintained by dissipating the stored energy in the sodium batteries prior to transportation.

Part 178

Section 178.71

Section 178.71 prescribes specifications for UN pressure receptacles. Several updates and sunset of older editions to referenced standards pertaining to the design, construction, and maintenance of UN pressure receptacles were adopted in the 23rd revised edition of the UN Model Regulations. To maintain consistency with the UN Model Regulations, PHMSA proposes to make similar updates to those ISO standards incorporated by reference in this section.

In paragraph (d), which specifies requirements for service equipment, including valves, piping, fittings, and other equipment, PHMSA proposes to add a reference to a new ISO document, ISO 23826:2021, *Gas cylinders—Ball valves—Specification and testing*. Currently, paragraph (d) states that the valves must conform to ISO 10297:2014

and this document's 2017 supplemental amendment. However, ball valves are explicitly excluded in ISO 10297 and other closure standards. ISO 23826 was added as a reference document in the 23rd revised edition of the UN Model Regulations to address the need for a separate standard for ball valves, which are used on pressure receptacles and cargo transport units. As provided in § 178.71, UN pressure receptacles and service equipment constructed according to the standards applicable at the date of manufacture may continue in use, subject to the continuing qualification and maintenance provisions of part 180; therefore, PHMSA does not expect cylinders manufactured with ball valves to comply retroactively with ISO 23826. PHMSA expects that the addition of this document will improve safety by ensuring that there is an appropriate reference standard for the design, type testing, marking, manufacturing tests, and examination for this type of valve.

In paragraph (g), which outlines the design and construction requirements for UN refillable seamless steel cylinders, PHMSA proposes to amend the reference to ISO 9809–4, *Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa*. Currently, this paragraph requires that UN refillable seamless steel cylinders conform to ISO standards, ISO 9809 Parts 1 through 4, as applicable. Specifically, PHMSA proposes to amend the reference to ISO 9809–4 in paragraph (g)(4) to include a reference to an updated 2021 version, ISO 9809–4:2021, and to add a sunset date on the authorization to use the 2014 version, ISO 9809–4:2014. The proposed sunset date of December 31, 2028, aligns with the sunset date adopted in the 23rd revised edition of the UN Model Regulations.

ISO 9809–4 specifies the minimum requirements for the materials, design, construction and workmanship, manufacturing processes, examinations and testing at time of manufacture for refillable, seamless, stainless steel gas cylinders with water capacities up to and including 150 liters. As part of its regular periodic review, ISO updated ISO 9809–4:2014 and published the second edition, 9809–4:2021. The second edition of this document, which was adopted in the 23rd revised edition of the UN Model Regulations, includes changes such as modified requirements for inspection and testing, clarifications of drawings of the cylindrical parts of shells in Figure 3, and the addition of a new subclause pertaining to shear

stress calculations. PHMSA reviewed this edition as part of its regular participation in the review of amendments proposed for the UN Model Regulations. PHMSA expects that updating the requirements for conformance of UN pressure receptacles with this document will maintain the HMR safety standard for these packagings and facilitate compliance with design and construction requirements domestically and internationally by aligning the HMR with changes adopted in the 23rd revised edition of the UN Model Regulations.

Paragraph (l) outlines the design and construction requirements for UN composite cylinders and tubes. Currently, this paragraph requires that composite cylinders and tubes conform to ISO 11119, Parts 1 through 4, as applicable. This series of ISO standards specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for certain composite gas cylinders and tubes. These standards were updated and revised, as discussed in the Section-by-Section Review discussion of § 171.7 changes. PHMSA proposes to authorize the use of the third edition of ISO 11119, Parts 1 through 3, and to add a phaseout date of December 31, 2028, for continued manufacture of pressure receptacles using the second edition. As part of its regular periodic review, ISO updated and published the third editions of the first three parts of ISO 11119, which were adopted in the 23rd revised edition of the UN Model Regulations. To maintain alignment with the requirements for UN composite cylinders and tubes in the UN Model Regulations, PHMSA proposes to authorize the use of the third edition of Parts 1 through 3, and to add a sunset date of December 31, 2028, on the authorizations to use the second edition that is currently referenced in this paragraph. This proposed sunset date aligns with the end date adopted in the 23rd revised edition of the UN Model Regulations.

Part 1, ISO 11119–1, *Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l*, specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for certain Type 2 composite hoop wrapped gas cylinders or tubes intended for the storage and conveyance of compressed

or liquefied gases, as well as cylinders and tubes with composite reinforcement of carbon fiber, aramid fiber or glass fiber (or a mixture thereof) within a matrix or steel wire with a minimum design life of fifteen years. The third edition of this document, ISO 11119-1:2020(E), updates the 2012 version, 11119-1:2012, which is currently authorized in this paragraph. The most significant changes in the third edition of Part 1 include updates and corrections to references throughout the document, the addition of minimum fiber stress ratios, changes to the fire resistance test procedure, and newly added criteria for tubes above 150 L.

Part 2, ISO 11119-2, *Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners*, specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for Type 3 fully wrapped cylinders or tubes with a load-sharing metal liner and composite reinforcement on both the cylindrical portion and the dome ends. The third edition of this document, ISO 11119-2:2020(E), updates the 2012 version, 11119-2:2012, which is currently authorized in this paragraph along with its 2014 supplemental amendment, ISO 11119-2:2012/Amd.1:2014(E). PHMSA proposes to authorize the third edition until further notice, and the use of second edition (ISO 11119-2:2012) in conjunction with the 2014 amendment (ISO 11119-2:2012/Amd.1:2014) until December 31, 2028. The most significant changes in the third edition of Part 2 include updated references, the addition of minimum fiber stress ratios, the addition of new alternatives for the drop test for certain cylinders, the addition of an alternative impact test for tubes 150 L and above, changes to fire resistance test procedure to make the test more consistent, and changes to the torque test.

Part 3, ISO 11119-3, *Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners or without liners*, specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for Type 4, fully wrapped cylinders or tubes with a non-load sharing liner and composite

reinforcement on both the cylindrical portion and the dome ends, and certain Type 5 fully wrapped cylinders or tubes without liners and with a test pressure of less than 60 bar and composite reinforcement on both the cylindrical portion and the dome ends with water capacities up to 450 L. This document is intended for cylinders used for the storage and conveyance of compressed or liquefied gases, cylinders, and tubes with composite reinforcement of carbon fiber, aramid fiber or glass fiber (or a mixture thereof) within a matrix, and for cylinders or tubes with a minimum design life of 15 years. The third edition of this document, ISO 11119-3:2020(E), updates the 2013 version, 11119-3:2013, which is currently authorized in this paragraph. As stated above, PHMSA proposes to authorize the use of the third edition until further notice and the continued use of second edition (ISO 11119-3:2013) until December 31, 2028. The most significant changes in the third edition of Part 3 include the addition of new alternatives for the drop test for cylinders up to and including 50 L water capacity with dedicated compressed gas service, the addition of alternative impact test for tubes 150 L and above, changes to the fire resistance test procedure to make the test more consistent and the addition of a criterion for tubes above 150 L, changes to the torque test, and a new procedure for the pneumatic cycle test. In addition, PHMSA proposes to remove references to ISO 11119-2:2012 in this paragraph as the authorization for the use of this document expired on December 31, 2020.

Lastly, in paragraph (o), which specifies material compatibility requirements for UN pressure receptacles, PHMSA proposes to amend the compatibility requirements to require compatibility with the third edition of ISO 11114-1:2020, *Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials*, and ISO 11114-2:2021, *Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials*. Currently, this paragraph prescribes the application of the requirements for material compatibility in accordance with ISO 11114-1:2012(E) and the 2017 supplemental amendment (ISO 11114-1:2012/Amd.1:2017) in sub-paragraph (o)(1), and ISO 11114-2:2013 in sub-paragraph (o)(2). ISO 11114-1 provides requirements for the selection of safe combinations of metallic cylinder and valve materials and cylinder gas contents. ISO 11114-2 provides

guidance on the selection and evaluation of compatibility between non-metallic materials for gas cylinders and valves and the gas contents. These documents were updated as part of ISO's regular periodic review of its standards, and the 23rd revised edition of the UN Model Regulations adopted changes that removed references to the previous editions. PHMSA has determined the use of these updated documents would allow safe transport of a wider variety of gases in newly developed types of metallic cylinders and valves without compromising safety. To provide uniformity in reference standards used domestically and internationally, PHMSA proposes to revise the compatibility requirements to authorize and refer only to the updated third edition of these ISO standards.

PHMSA has reviewed each of these documents as part of its regular participation in the review of amendments proposed for the 23rd revised edition of the UN Model Regulations and expects that adding them to the HMR will enhance the current safety of hazardous materials in transportation, in addition to harmonizing the HMR with international requirements.

Section 178.75

Section 178.75 prescribes specifications for MEGCs, which are assemblies of UN cylinders, tubes, or bundles of cylinders interconnected by a manifold and assembled within a framework. PHMSA proposes to revise paragraph (d)(3), which outlines the general design and construction requirements for MEGCs. Currently, this paragraph requires that each pressure receptacle of a MEGC be of the same design type, seamless steel, and constructed and tested according to any of nine ISO standards, including the first edition of 9809-4, *Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa* and the ISO series 11119, *Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes*. For Parts 1 through 3 of the series, paragraph (d)(3) references the second edition (and a supplemental amendment for part 2, ISO 11119-2:2012/Amd.1:2014(E)); however, these parts, as well as ISO 9809-4, were updated and revised, as discussed in the Section-by-Section Review discussion of § 171.7 changes. PHMSA proposes to authorize the use of the second edition of ISO 9809-4, the third edition of ISO 11119, Parts 1 through 3, and to add a phaseout date of December 31, 2028, for

continued manufacture of pressure receptacles using the previous editions of both documents.

As discussed earlier, the ISO series 11119 specifies minimum requirements for the material, design, construction and workmanship, manufacturing processes, examination and testing at time of manufacture for composite cylinders or tubes. ISO 9809–4 specifies the minimum requirements for the material, design, construction and workmanship, manufacturing processes, examinations, and tests at manufacture of refillable seamless stainless steel gas cylinders of water capacities from 0.5 L up to and including 150 L for compressed, liquefied, and dissolved gases.

Authorizing the use of these updated references to this document would align the HMR with changes adopted in the 23rd revised edition of the UN Model Regulations, pertaining to the design and construction of pressure vessels, including MEGCs, while maintaining the HMR safety standard for use of MEGCs. PHMSA expects that harmonizing the documents incorporated by reference with standards referenced in international standards, such as the UN Model Regulations, will avoid operational inefficiencies and provide marginal cost savings to these industries by removing the need for users (e.g., manufacturers, inspectors, etc.) to refer to multiple versions of ISO documents to ensure that no testing and design requirements are unfulfilled.

Section 178.504

Section 178.504 prescribes the construction standards for steel drums. Paragraph (b)(4) in this section states that drums with a capacity of at least 60 L (16 gallons) may have at least two expanded rolling hoops or two separate rolling hoops. PHMSA proposes to amend this paragraph by removing reference to the 60 L (16 gallons) capacity and the number of hoops. At the 59th session of the UNSCOE, it was agreed that it is unnecessary to specify when rolling hoops may be used (*i.e.*, specify use for drums with a capacity of at least 60 L) or to specify that a specific number of hoops may be used. Rolling hoops facilitate the handling of drums. Further, competent authorities do not consider the presence or absence of rolling hoops on drums to be a safety issue, because rolling hoops are intended primarily for handling. These changes were recently made in the UN Model Regulations to clarify that rolling hoops were not mandatory and to harmonize the regulatory text from various countries. While the regulatory

text in the HMR already made it clear that rolling hoops were not mandatory, PHMSA expects that amending paragraph (b)(4) by removing the 60 L capacity threshold and the number of hoops to state simply that steel drums may have rolling hoops will provide beneficial clarification for manufacturers regarding the permissibility of rolling hoops on steel drums and packaging design flexibility that provide opportunities for cost savings for domestic packaging manufacturers.

Section 178.505

Section 178.505 prescribes the construction standards for aluminum drums. Paragraph (b)(3) in this section states that drums with a capacity of at least 60 L (16 gallons) may have at least two expanded rolling hoops or two separate rolling hoops. PHMSA proposes to amend this paragraph by removing reference to the 60 L (16 gallons) capacity and the number of hoops. For additional information, see the Section-by-Section Review in Section 178.504.

Section 178.506

Section 178.506 prescribes the construction standards for metal drums other than steel or aluminum. Paragraph (b)(3) in this section states that drums with a capacity of at least 60 L (16 gallons) may have at least two expanded rolling hoops or two separate rolling hoops. PHMSA proposes to amend this paragraph by removing reference to the 60 L (16 gallons) capacity and the number of hoops. For additional information, see the Section-by-Section Review in Section 178.504.

Part 180

Section 180.207

Section 180.207 outlines the requirements for the requalification of UN pressure receptacles. Paragraph (d)(1) specifies the requirements for the requalification of these pressure receptacles that are constructed of seamless steel. Currently, in accordance with the UN Model Regulations, paragraph (d)(1) allows for the internal inspection and hydraulic pressure test to be replaced by a procedure conforming to ISO 16148:2016(E), *Refillable seamless steel gas cylinders and tubes—Acoustic emission examination (AT) and follow-up ultrasonic examination (UT) for periodic inspection and testing*. However, ISO has since issued a supplemental amendment (ISO 16148:2016/Amd. 1:2020(E)) for the 2016 edition referenced in this section

(ISO 16148:2016). Amendment 1 is a short two-page supplemental correction. The supplement includes a significant correction concerning the calculation of the depth of the notches used for calibration. In light of this correction, the 23rd revised edition of the UN Model Regulations now requires the use of the 2016 document in conjunction with the 2020 supplemental amendment. PHMSA proposes to incorporate by reference the supplemental amendment in paragraph (d)(1). PHMSA expects that the additional requirement to use this supplemental amendment will improve the safety of transporting UN pressure receptacles by requiring the use of improved engineering standards.

VI. Regulatory Analyses and Notices

A. Legal Authority

This NPRM is published under the authority of Federal Hazardous Materials Transportation Law. Section 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Section 5120 requires the Secretary to participate in international forums that establish or recommend mandatory standards, and authorizes the Secretary to consult with interested international authorities to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with the standards adopted by international authorities. The Secretary has delegated the authority granted in the Federal Hazardous Materials Transportation Law to the PHMSA Administrator at 49 CFR 1.97(b).

B. Executive Order 12866; Regulatory Planning and Review

Executive Order (E.O.) 12866 (*Regulatory Planning and Review*) requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.”³⁵ Similarly, DOT Order 2100.6B (*Policies and Procedures for Rulemakings*) states that if a regulatory action is expected to impose any costs it must include “a detailed discussion of the rationale supporting the specific regulatory action proposed

³⁵ 58 FR 51735 (Oct. 4, 1993).

and an explanation of why a less costly alternative is not an option.”³⁶

Under E.O. 12866 and DOT Order 2100.6B, PHMSA must submit “significant regulatory actions” to the Office of Management and Budget (OMB) for review. This rulemaking is not considered a significant regulatory action under Section 3(f) of E.O. 12866 and, therefore, was not formally reviewed by OMB. This rulemaking is also not considered a significant rule under DOT Order 2100.6B.

C. Executive Orders 14192 and 14219

This NPRM is expected to be an E.O. 14192 (*Unleashing Prosperity Through Deregulation*) deregulatory action.³⁷ PHMSA has determined the total costs of the rule imposed on the regulated

community will be less than zero and estimates an annualized net cost savings between \$0.19–1.12 million. Details on the costs, cost savings, and benefits of this rulemakings are summarized below, and further analysis can be found in the PRIA, which is available in the public docket. PHMSA seeks public comment on its proposed revisions to the HMR and the preliminary cost and benefit analyses in the PRIA.

PHMSA proposes to amend the HMR to align with the latest international regulations and standards, maintaining the high safety standard currently achieved under the HMR and facilitating the safe transportation of hazardous materials. PHMSA examined the likely impacts of finalizing and

implementing the provisions proposed in this NPRM to assess the benefits and costs of these amendments. This analysis allowed PHMSA to assess quantitatively the material effects of four of the proposed amendments in the rulemaking. The effects of six remaining proposed amendments are not quantified but are assessed qualitatively.

PHMSA estimates that on an annualized basis costs savings to the regulated community for this rulemaking are greater than costs, yielding an annualized net cost savings between \$0.19–1.12 million, at a seven percent discount rate. The following Table 1 presents a summary of the monetized impacts that these proposed changes may have upon codification.

TABLE 1—RANGE OF NET REGULATORY COSTS SAVINGS (MILLIONS, 2023\$) ESTIMATES, THREE % AND SEVEN % DISCOUNT RATES, 2025 TO 2034

Quantified topic	10-Year costs (3%)		10-Year cost savings (3%)		10-Year net cost savings (3%)		Annual costs (3%)		Annual cost savings (3%)		Annual net cost savings (3%)	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
2: HMT additions	\$0.06	\$0.06	\$0	\$0	\$(0.06)	\$(0.06)	\$0.01	\$0.01	\$0	\$0	\$(0.01)	\$(0.01)
3: Limited Quantity Gas	0	0	11.14	11.14	11.14	11.14	0	0	1.27	1.27	1.27	1.27
4: Organic Peroxides	0	0	0.01	0.05	0.01	0.05	0	0	0.002	0.01	0.002	0.01
5: TMAH	0.56	8.67	0	0	(8.67)	(0.56)	0.06	0.99	0	0	(0.99)	(0.06)
6: Sodium ion Batteries and State-of-charge	0.51	0.89	0	0	(0.89)	(0.51)	0.06	0.10	0	0	(0.10)	(0.06)
Total	1.13	9.62	11.15	11.19	1.53	10.06	0.13	1.09	1.27	1.27	0.17	1.15

Quantified topic	10-Year costs (7%)		10-Year cost savings (7%)		10-Year net cost savings (7%)		Annual costs (7%)		Annual cost savings (7%)		Annual net cost savings (7%)	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
2: HMT additions	\$0.05	\$0.05	\$0	\$0	\$(0.05)	\$(0.05)	\$0.01	\$0.01	\$0	\$0	\$(0.01)	\$(0.01)
3: Limited Quantity Gas	0	0	9.30	9.30	9.30	9.30	0	0	1.24	1.24	1.24	1.24
4: Organic Peroxides	0	0	0.01	0.04	0.01	0.04	0	0	0.00	0.01	0.00	0.01
5: TMAH	0.46	7.10	0	0	(7.10)	(0.46)	0.06	0.95	0	0	(0.95)	(0.06)
6: Sodium ion Batteries and State-of-charge	0.45	0.77	0	0	(0.77)	(0.44)	0.06	0.10	0	0	(0.10)	(0.06)
Total	0.96	7.92	9.31	9.34	1.39	8.40	0.13	1.05	1.24	1.24	0.19	1.12

Note: Values in parentheses in net costs savings columns indicate costs. Low net cost savings for each amendment are determined by subtracting the highest costs from the lowest cost savings. High net cost savings are determined by subtracting the lowest costs from the highest cost savings.

The safety and environmental benefits of the proposed rule have not been quantified. PHMSA expects the proposed amendments to improve public safety and reduce the risk of environmental harm by maintaining consistency between these international regulations and the HMR. Harmonizing the HMR with international consensus standards as proposed should reduce delays and interruptions of hazardous materials during transportation.

Overall, the revisions adopted in this rulemaking promote the continued safe transportation of hazardous materials while producing a net cost savings. PHMSA finds this NPRM does implicate any of the factors identified in section 2(a) of E.O. 14219 indicative of a regulation that is “unlawful . . . [or] that undermine[s] the national interest.”³⁸

D. Energy-Related Executive Orders 13211, 14154, and 14156

The President has declared in E.O. 14156 (*Declaring a National Energy Emergency*) a national emergency to address the United States’ inadequate energy development production, transportation, refining, and generation capacity.³⁹ Similarly, E.O. 14154 (*Unleashing American Energy*) asserts a Federal policy to unleash American energy by ensuring access to abundant supplies of reliable, affordable energy

³⁶ DOT Order 2100.6B, available at: <https://www.transportation.gov/regulations/dot-order-21006b-policies-and-procedures-rulemakings>.

³⁷ 90 FR 9065 (Jan. 31, 2025).

³⁸ 90 FR 10583 (Feb. 19, 2025).

³⁹ 90 FR 8353 (Jan. 29, 2025).

from (inter alia) the removal of “undue burden[s]” on the identification, development, or use of domestic energy resources.⁴⁰ PHMSA preliminarily finds this NPRM is consistent with each of E.O. 14156 and E.O. 14154.

This NPRM is not a “significant” energy action under E.O. 13211 (*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*). It also is not a significant regulatory action under E.O. 12866 and is therefore not likely to have a significant adverse effect on the supply, distribution, or use of energy for purposes of the requirements of Executive Orders 14156 (*Declaring a National Energy Emergency*) and 14154 (*Unleashing American Energy*).

In fact, as opposed to having an adverse effect on the domestic supply, distribution, or use of energy, this proposed rule may actually streamline such transportation. Many of the proposals in this NPRM include provisions that provide flexibility to domestic shippers, such as those that allow for the use of additional packaging types or allow for hazardous materials to be transported in larger quantities. Other provisions remove the requirement for shippers in the United States to apply for an approval prior to transport certain hazardous materials or providing general exceptions from regulation. This NPRM includes various editorial changes that clarify regulatory requirements that may prevent the frustration of energy-related shipments upon entry to, or departure from, the United States.

E. Executive Order 13132: Federalism

PHMSA analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 (*Federalism*) and the Presidential Memorandum (*Preemption*) that was published in the **Federal Register** on May 22, 2009.⁴¹ Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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.”

The rulemaking may preempt State, local, and Native American tribe requirements, but does not propose any regulation that has substantial direct effects on the States, the relationship

between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The Federal Hazardous Materials Transportation Law contains a provision at 49 U.S.C. 5125(b) that expressly preempts State, local, and tribal requirements on certain covered subjects, unless the non-Federal requirements are “substantively the same” as the Federal requirements, including the following:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (1), (2), (3), (4), and (5) above and would preempt State, local, and tribal requirements not meeting the “substantively the same” standard. In this instance, the preemptive effect of the proposed rule is limited to the minimum level necessary to achieve the objectives of the hazardous materials transportation law under which the final rule is promulgated. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to review proposed regulations to assess their impact on small entities, unless the agency head certifies that a proposed rulemaking will not have a significant economic impact on a substantial number of small entities, including small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (*Proper Consideration of Small*

Entities in Agency Rulemaking) requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to “review draft rules to assess and take appropriate account of the potential impact” of the rules on small businesses, governmental jurisdictions, and small organizations.⁴² The DOT posts its implementing guidance on a dedicated web page.⁴³

This NPRM has been developed in accordance with E.O. 13272 and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. This NPRM facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users, and suppliers, packaging manufacturers, distributors, and training companies. As discussed at length in the PRIA found in the rulemaking docket, the amendments in this proposed rule should result in net cost savings that would ease the regulatory compliance burden for those and other entities engaged in domestic and international commerce, including trans-border shipments within North America. In addition, the changes proposed in this NPRM would relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, PHMSA expects that these amendments will not, if adopted, have a significant economic impact on a substantial number of small entities. However, PHMSA solicits comments on the anticipated economic impacts to small entities.

G. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is least burdensome alternative that achieves the objective of the rulemaking.

⁴² 67 FR 53461 (Aug. 16, 2002).

⁴³ DOT, *Rulemaking Requirements Related to Small Entities*, available at: www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities.

⁴⁰ 90 FR 8353 (Jan. 29, 2025).

⁴¹ 64 FR 43255 (Aug. 10, 1999); 74 FR 24693 (May 22, 2009).

H. National Environmental Policy Act

1. Introduction

The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), requires that Federal agencies analyze proposed actions to determine whether the action would have a significant impact on the human and natural environment. When a proposed action does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, Federal agencies are required to prepare an environmental assessment. If, based on the finding of the environmental review, the agency determines not to prepare an Environmental Impact Statement (EIS) because the proposed action will not have significant effects on the human or natural environment, the agency can conclude the NEPA process with a finding of no significant impact (FONSI) (42 U.S.C. 4336(b)(2)).

2. Purpose and Need

The purpose of this proposed rulemaking is to comply with the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101, *et seq.*), which directs PHMSA to participate in relevant international

standard-setting bodies and encourages alignment of the HMR with international transport standards, as consistent with promotion of safety and the public interest.⁴⁴

The need for this proposed rulemaking stems from recent amendments to international standards and regulations (e.g., UN Model Regulations), which have created inconsistencies with the HMR. These inconsistencies can impose burdens, such as cost or reduced efficiency on entities complying with multiple or varying safety requirements. Harmonization has become increasingly important as the volume of hazardous materials transported in international commerce grows. The harmonization amendments that PHMSA is proposing would minimize the burdens of complying with multiple standards for the transportation of hazardous materials. It would also enhance safety by ensuring consistency between domestic and international standards, which reduces the potential for confusion and encourages compliance with safety standards throughout the supply chain, from the manufacturer or shipper to the end-users and emergency responders.

The preamble and regulatory text sections of this NPRM provide

additional information of the policy background and need for this rulemaking.

3. Description of Alternatives

3.1 No Action Alternative

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no provisions would be amended or added. This alternative would not be consistent with the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101, *et seq.*), which encourages alignment of the HMR with international transport standards, and would not reduce burdens imposed by multiple or varying safety requirements. Thus, the no action alternative does not fulfill the purpose and need of the proposed rule.

3.2 Proposed Action Alternative (Proposed Rule)

This alternative is the current proposal as it appears in this NPRM, applying to transport of hazardous materials by various transport modes (highway, rail, vessel, and aircraft). The proposed amendments included in this alternative are summarized below and more fully discussed in the preamble and regulatory text sections of this NPRM.

Topic	Proposed amendments
Incorporation by reference	PHMSA proposes to incorporate by reference updated versions of the following international hazardous materials regulations and standards: • The 2025–2026 edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) • Amendment 42–24 to the International Maritime Dangerous Goods Code (IMDG Code) • The 2023 edition of Transport Canada's Transportation of Dangerous Goods (TDG) Regulations • The 23rd revised edition of the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations)
Hazardous Materials Table	PHMSA proposes amendments to the Hazardous Materials Table (HMT; § 172.101) to add, to revise, or to remove certain proper shipping names (PSN), hazard classes, packing groups (PG), special provisions, packaging authorizations, bulk packaging requirements, and passenger and cargo aircraft maximum quantity limits.
Increase in authorized amounts of certain gases transported as limited quantities.	PHMSA proposes, for modes other than air transportation, to authorize four Division 2.2 (non-flammable and non-poisonous) compressed gases for transport in DOT specification cylinders and UN pressure receptacles as a limited quantity material in quantities up to 1000 ml (34 fluid ounces) per package. These materials are: “UN1006, Argon,” “UN1013, Carbon dioxide,” “UN1046, Helium,” and “UN1066, Nitrogen.”
Specific concentration limits for ammonium nitrate hot concentrated solutions.	PHMSA proposes to add specific conditions under which solutions of ammonium nitrate hot concentrate can be transported under the HMT entry “UN2426, Ammonium nitrate” or qualify for exception from regulation under the HMR. These proposed requirements for solutions of ammonium nitrate to be transported under UN2426 are based on concentration, water content, combustible material content, chlorine content, pH level, and temperature. These requirements were adopted in the 23rd revised edition of the UN Model Regulations to harmonize transport conditions and requirements multimodally.
Amendments to provisions for the transport of tetramethylammonium hydroxide.	PHMSA proposes to adopt several changes pertaining to entries for Tetramethylammonium hydroxide (TMAH) which were adopted in response to new incident and test data that shows that this material presents a toxicity hazard in addition to the previously identified corrosivity hazard. The proposed amendments include the addition of a new HMT entry for aqueous solutions, revisions to the hazard classification and proper shipping names of the existing entries for PG II and PG III TMAH solutions (UN1835), reclassification of TMAH solids (UN3423), the addition of two new special provisions, and revised packaging authorizations.

⁴⁴ 49 U.S.C. 5120.

Topic	Proposed amendments
Exceptions for nitrocellulose membrane filters used in rapid test devices.	PHMSA proposes to add a new special provision, that would provide specific packaging requirements that would allow for “UN3270, Nitrocellulose membrane filters, <i>with not more than 12.6% nitrogen, by dry mass</i> ” to be excepted from regulation. These materials are most notably used in rapid test devices for infectious diseases like COVID–19, influenza, hepatitis, malaria, borreliosis and other diseases, and as substrates for bioanalytical tests as well as pregnancy tests. These changes were adopted in 23rd revised edition of the UN Model Regulations to facilitate further the transport of these items, which are often used in medical testing.
New requirements for sodium ion batteries.	PHMSA proposes to add new HMT entries and transport provisions for sodium ion batteries. The proposed provisions mirror those adopted in the 2025–2026 edition of the ICAO Technical Instructions and the 23rd revised edition of the UN Model Regulations, which ultimately regulate sodium ion batteries in the same way as lithium ion batteries. These new provisions were developed and adopted in various international regulations in response to the anticipated increases in the use of sodium ion batteries as an alternative to lithium ion batteries.
Improved emergency response for lithium batteries transported as UN3536.	PHMSA proposes to amend Special Provision 389 to require that the emergency response information for UN3536 specifically identify the predominant type of energy storage battery installed in the unit (<i>i.e.</i> , lithium ion or metal batteries) and provide information on immediate methods for handling fires. PHMSA also proposes an editorial revision to create a paragraph structure for Special Provision 389 to increase clarity for the reader.

3.3 Alternatives Considered but Dismissed

Full Harmonization

This alternative would incorporate all changes adopted in the 23rd revised edition of the UN Model Regulations, the 2025–2026 edition of the ICAO Technical Instructions, and Amendment 42–24 to the IMDG Code. The Federal Hazardous Materials Transportation Law directs the Secretary of Transportation to ensure that domestic regulations are generally consistent with international standards, except where such standards are unnecessary, unsafe, or where a more stringent safety requirement is not in the public interest.⁴⁵ In evaluating potential alignment with international standards, PHMSA assesses each amendment individually, considering its merits, overall impact on transportation safety, and associated economic implications. Automatically adopting all international changes without regard to their relevance or appropriateness for domestic transportation would create unnecessary compliance burdens, complicate implementation, and increase regulatory complexity without improving safety or efficiency. Thus, this alternative does not meet the purpose and need of the rulemaking and has been dismissed from further consideration in this EA.

4. Affected Environment

The proposed rule amends certain provisions of the HMR to maintain alignment with international consensus standards and regulations. The proposed rule would apply to the transportation of hazardous materials by various transport modes (highway, rail, vessel, and aircraft) that occur

nationwide. Because the proposed rule is national in scope, it can be assumed the affected environment includes environmental resources such as air, land, water, and cultural features throughout the entirety of the United States.

5. Environmental Consequences

5.1 No Action Alternative

If PHMSA were to select the No Action Alternative, the HMR would remain unchanged, and no provisions would be amended or added. However, any economic benefits gained through harmonization of the HMR with updated international consensus standards (including, but not limited to, the 23rd revised edition of the UN Model Regulations, the 2025–2026 ICAO Technical Instructions and Amendment 42–24 of the IMDG Code) governing shipping of hazardous materials would not be realized.

In addition, the No Action Alternative would not adopt enhanced and clarified regulatory requirements expected to maintain the high level of safety in transportation of hazardous materials provided by the HMR. As explained in the preamble to the NPRM, consistency between the HMR and current international standards can enhance safety by (1) ensuring that the HMR are informed by the latest best practices and lessons learned; (2) improving understanding of, and compliance with, pertinent requirements; (3) facilitating the flow of hazardous materials from their points of origin to their points of destination, thereby avoiding risks to the public and the environment from handling and potential release of hazardous materials due to delays or interruptions in the transportation of those materials; and (4) enabling consistent emergency response procedures in the event of a hazardous

materials incident. PHMSA would not capture those benefits if it were to pass on incorporating updated international standards into the HMR under the No Action Alternative.

5.2 Proposed Action Alternative (Proposed Rule)

The changes proposed under the Proposed Action Alternative is expected to maintain the high safety standards currently achieved under the HMR by maintaining alignment with international consensus standards by incorporating various standards by reference. Harmonization of the HMR with updated international consensus standards would capture economic efficiencies gained from avoiding shipping delays and compliance costs associated with having to comply with divergent U.S. and international regulatory regimes for transportation of hazardous materials. Further, revision of the HMR as proposed in the NPRM will accommodate safe transportation of emerging technologies (in particular, components of lithium battery technologies) by aligning HMR requirements with anticipated increases in the volume of lithium and sodium batteries transported in interstate commerce and facilitate safe shipment of hazardous materials.

5.2.1 Public Health & Safety

In addition, harmonization would reduce the risk of spills, explosions, fire, package failure, natural forces, or other transportation-related hazards resulting from improperly preparing and transporting a hazmat shipment by streamlining the transportation process. It would also improve communication with emergency responders in the event of an incident, mitigating potential impacts. Hazardous materials can be extremely harmful to the environment

⁴⁵ 49 U.S.C. 5120(c).

and human health, since exposure to toxic chemicals could lead to the injury or death of plants, animals, and humans (Erkut et al., 2007; Erkut et al., 1998). The risk (*i.e.*, the probability or severity of harm to exposed “receptors”—persons, the environment, or property) of a hazardous materials transportation incident depends on several factors including travel duration, the incident location, notably whether the incident occurs near a heavily populated area or sensitive environment, and whether the incident involves a spill/release, fire, or explosion. PHMSA is unable to identify hazardous materials being transported within the United States with an international destination or point of origin (*i.e.*, imports and exports), or the frequency with which these shipments, while being transported within the United States, are compliant with international regulations but in violation of the HMR and are associated with an accident involving the release of a hazardous material. As a result, PHMSA is unable to quantify the benefits associated with avoided incidents.

Further, proposed changes to the Hazardous Materials Table (HMT) provide shippers the flexibility and regulatory clarification and certainty to classify, to describe, and to package properly materials for transportation in the U.S. and internationally. Clear communication (such as appropriate labels, markings, placards, shipping papers, etc.) of the hazardous materials shipments is critical in ensuring shippers take appropriate precautions to prevent incidents and to handle materials correctly and responders take appropriate response measures.

The primary effect of the proposed new HMT entries for battery-powered vehicles and equipment is to harmonize the HMT with the UN Model Regulations Dangerous Goods List, thus facilitating the international shipping of these materials. Furthermore, this amendment would increase safety by giving first responders more notice about the specific battery technology installed in the electric vehicle or equipment and thus the risks associated with the battery should the material be involved in an accident. For example, lithium metal batteries necessitate a different firefighting technique than lithium ion batteries. Thus, the more specific the hazard communication for each battery type that powers a transported vehicle (or equipment) the better first responders (and those persons handling the material) are prepared to react more capably to incidents.

The proposed rule would also increase safety by giving handlers of TMAH notice of the toxicity hazard of TMAH, especially for higher concentrations of this item. TMAH has alkaline corrosive properties that can cause chemical skin burns, as well as toxic properties that can cause systemic neurotoxic effects that can lead to respiratory failure and cardiac arrest. The corrosivity of TMAH solutions damages the skin allowing for increased dermal uptake of TMAH. Solid TMAH is hygroscopic and will take up water or dissolve into the surface moisture of the skin. Adoption of a new UN number specifically for more toxic versions of this material would give greater notice to handlers and reduce the impact of the reported toxicity, however these specific benefits are unquantifiable compared to the No Action, which already includes notice that TMAH is dangerous to humans as a hazardous material.

6. Public Involvement

This DEA and the proposed rule will be released for public review and comment in docket PHMSA–2023–0111 (HM–215R). To access the docket, which contains background documents and any comments that PHMSA has received, go to <https://www.regulations.gov>. Follow the online instructions for accessing the docket. Alternatively, you may review the documents in person at DOT’s Docket Management Office at the address listed below.

E-Gov Web: This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

Mail: Docket Management System: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: DOT Docket Management System: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9:00 a.m. and 5:00 p.m. ET, Monday–Friday, except Federal holidays.

7. Agencies and Persons Consulted

PHMSA has coordinated with FAA, FMCSA, FRA, and USCG in the development of this proposed rule. PHMSA solicits, and will consider, comments on the NPRM’s potential impacts on the human environment submitted by members of the public, State, and local governments, tribal communities, and industry.

8. Proposed Finding of No Significant Impact

PHMSA is soliciting comments on the environmental and safety impacts of the proposed rule and on this DEA. Following the public comment period, if determined appropriate, a FONSI will be prepared. All comments received during this period will be addressed and attached to any final NEPA document.

9. List of Preparers and Reviewers

Preparers:

Lydia Wang, PHMSA

Reviewers:

Carolyn Nelson, PHMSA

Sandy Hoover, Volpe

I. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

PHMSA has analyzed this NPRM according to E.O. 13175 (*Consultation and Coordination with Indian Tribal Governments*) and DOT Order 5301.1A (*Department of Transportation Tribal Consultation Policies and Procedures*).⁴⁶ Because the NPRM does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of E.O. 13175 do not apply.

J. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform better its rulemaking process. DOT posts these comments, without edit and including any personal information that the commenter includes, in the system of records notice. DOT’s complete Privacy Act Statement is in the **Federal Register** published on April 11, 2000, or on DOT’s website at <http://www.dot.gov/privacy>.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Pursuant to 44 U.S.C. 3506(c)(2)(B) and 5 CFR 1320.8(d), PHMSA must provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests.

PHMSA has analyzed this NPRM in accordance with the Paperwork

⁴⁶ 65 FR 67249 (Nov. 6, 2000); Dep’t of Transportation, *DOT Order 5301.1A* (Aug. 10, 2023), available at: <https://www.transportation.gov/mission/department-transportation-tribal-consultation-policy-and-procedures>.

Reduction Act. See discussions on the OMB control numbers affected below: 2137–0034, “Shipping Papers and Emergency Response Information”

PHMSA accounts for shipping paper burdens under OMB Control Number 2137–0034, *Hazardous Materials Shipping Papers and Emergency Response Information*. PHMSA is proposing two amendments in this NPRM that may have minor impacts to this OMB Control Number: (1) the addition of two chemicals to the marine pollutants list in Appendix B to § 172.101 and (2) an additional requirement in § 172.203 for material transported by air and bearing “RADIOACTIVE YELLOW–II” or “RADIOACTIVE YELLOW–III” labels to include dimensions including the dimensional units of each package, or when placed in an overpack or freight container, the dimensions of the overpack or freight container as applicable on the shipping paper. PHMSA expects that the addition of two marine pollutants will have a negligible effect on the overall burden associated with this information collection. PHMSA already accounts for the information required on a shipping paper in § 172.203 and expects that the overall impact of adding the package dimension to a subset of shipping papers will be negligible in relation to the number of burden hours currently associated with this information collection. PHMSA welcomes comments from stakeholders on these assumptions.

In addition, PHMSA is proposing a third amendment in this NPRM that is expected to result in a measurable increase in the burden hour associated with this OMB control number. Currently, the requirements in § 173.185(a)(3) to produce and to share a test summary document apply only to lithium cells and batteries as finalized in the HM–224F Final Rule. In this NPRM, PHMSA is proposing to change the applicability in § 173.185(a)(3) to apply to lithium and sodium ion cells and batteries. This will result in sodium ion battery manufacturers having to produce and to share a test summary document that is currently only required by lithium cells and batteries.

PHMSA identified four domestic sodium ion cell or battery manufacturers per U.S. Census’ Annual Survey of Manufactures (ASM) (NAICS code 335912). PHMSA estimated that each one of these manufacturers will test one sodium ion battery type per year. Therefore, four new test summaries must be created for sodium ion cells or batteries (four manufacturers × one sodium ion cells or batteries per manufacturer). The time to create a test

summary is estimated conservatively at 30 minutes per document as PHMSA estimated for lithium cells and batteries in the HM–224F final rule. Thus, PHMSA estimates that this proposal will increase the burden by two hours (four test reports × 30 minutes).

PHMSA estimates that 316 respondents, including sodium ion cell and battery manufacturers and subsequent distributors, may need to make the test summary available. This estimate includes downstream distributors of sodium ion cells and batteries comprised of product manufacturers and distributors/retails and domestic sodium ion cell and battery manufactures. It is estimated that these 316 respondents will annually provide the test summary document 1,252 times. PHMSA estimates it will take seven minutes to provide a copy of the test summary document resulting in an additional 146 burden hours (1,252 responses × seven minutes per response).

Lastly, PHMSA estimates that 292 respondents will produce 7,292 shipping papers annually for the shipment of sodium ion cells and batteries. PHMSA estimates it takes one minute and 30 seconds to produce a shipping paper resulting in an additional 182 burden hours per year (7,291 responses × one minute 30 seconds per response). PHMSA estimates that there are no out-of-pocket burden costs associated with these information collections.

OMB Control No. 2137–0034: Hazardous Materials Shipping Papers and Emergency Response Information.

Increase in Annual Number of Respondents: 324.

Increase in Annual Responses: 8,549.

Increase in Annual Burden Hours: 330.

Increase in Annual Burden Cost: \$0.

2137–0557, Approvals for Hazardous Materials

PHMSA accounts for the burdens from approval applications in OMB Control Number 2137–0557, *Approvals for Hazardous Materials*. In this NPRM, PHMSA is proposing to add new entries to the § 173.225 Organic Peroxide Table, which PHMSA expects estimates would decrease the number of annual approval applicants. However, PHMSA expects that these proposed changes are negligible to the number of burden hours associated with this information collection.

PHMSA is also proposing a new requirement in § 173.169 to require a competent authority approval for the shipment of fire suppressant dispersing devices. These proposed requirements

in § 173.169 address the classification, handling and transport of fire suppressant dispersing devices as a Class 9 material. Specifically, PHMSA proposes that these fire suppressant dispersing devices must be examined and successfully tested by a person or agency who is authorized by the Associate Administrator to perform examination and testing of explosives as explained in § 173.56(b)(1), followed by submittal to the Associate Administrator and issuance of an EX approval.

PHMSA conservatively estimates shippers will submit an approval request for 100 fire suppressant dispersing devices on an annual basis. PHMSA estimates each approval will take 1 hour for a shipper to complete. This will result in 100 annual burden hours associated with this approval and test report (100 responses × one hour per approval). PHMSA estimates that there are no out-of-pocket burden costs associated with this information collection.

OMB Control No. 2137–0557: Approvals for Hazardous Materials.

Increase in Annual Number of Respondents: 100.

Increase in Annual Responses: 100.

Increase in Annual Burden Hours: 100.

Increase in Annual Burden Cost: \$0.

PHMSA requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining the proposed requirements in this NPRM. Address written comments to the DOT Docket Operations Office identified in the **ADDRESSES** section of this rulemaking. PHMSA must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. Requests for a copy of this information collection should be directed to Steven Andrews or Ryan Larson, Standards and Rulemaking Division (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

L. Executive Order 13609 and International Trade Analysis

Per E.O. 13609 (*Promoting International Regulatory Cooperation*), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are

unnecessary or may impair the ability of American business to export and to compete internationally.⁴⁷ In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465) (as amended, the Trade Agreements Act), prohibits agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to the Trade Agreements Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they are the basis for U.S. standards.

PHMSA participates in the establishment of international standards to protect the safety of the American public, and it has assessed the effects of the NPRM to ensure that it does not cause unnecessary obstacles to foreign trade. In fact, the proposed rule is expected to facilitate international trade by harmonizing U.S. and international requirements for the transportation of hazardous materials to reduce regulatory burdens and minimize delays arising from having to comply with divergent regulatory requirements. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreements Act.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. § 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities, unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus

standards are technical standards (*e.g.*, specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. This NPRM involves multiple voluntary consensus standards, which are discussed at length in the preamble. See the Section-by-Section Review in Section 171.7 for further details.

N. Cybersecurity and Executive Order 14028

Pursuant to E.O. 14028 (*Improving the Nation's Cybersecurity*), “the prevention, detection, assessment, and remediation of cyber incidents is a top priority and essential to national and economic security.”⁴⁸ The E.O. directed the Federal Government to improve its efforts to identify, deter, and respond to “persistent and increasingly sophisticated malicious cyber campaigns.” PHMSA has considered the effects of the NPRM and has determined that its proposed regulatory amendments would not materially affect the cybersecurity risk profile for transportation of hazardous materials.

O. Severability

The purpose of this NPRM is to operate holistically in addressing different issues related to safety and environmental hazards associated with the transportation of hazardous materials. However, PHMSA recognizes that certain provisions focus on unique topics. Therefore, PHMSA finds that the various provisions of this proposed rule are severable and able to function independently if severed from each other. Thus, in the event a court were to invalidate one or more of this NPRM's unique provisions, the remaining provisions stand and continue in effect.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging, and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Maritime Carriers, Radioactive Materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging, and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging, and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

- 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81, 1.97.

- 2. In § 171.6:

- a. Designate the table immediately following paragraph (b)(2) as “Table 1 to Paragraph (b)(2)—OMB Control Numbers under the Paperwork Reduction Act”.

- b. Revise entries in the newly designated Table 1 to paragraph (b)(2) for “OMB No. 2137–0034”, “OMB No. 2137–0557”, and “OMB No. 2137–0572”.

The revisions read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

*	*	*	*	*
(b)	*	*	*	*
(2)	*	*	*	*

⁴⁷ 77 FR 26413 (May 4, 2012).

⁴⁸ 86 FR 26633 (May 17, 2021).

TABLE 1 TO PARAGRAPH (b)(2)—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
2137–0034	Hazardous Materials Shipping Papers and Emergency Response Information.	§§ 172.200, 172.201, 172.202, 172.203, 172.204, 172.505, 172.600, 172.602, 172.604, 172.606, 173.6, 173.7, 173.22, 173.56, 173.185, 174.24, 174.26, 174.114, 175.30, 175.31, 175.33, 176.24, 176.27, 176.30, 176.36, 176.89, 177.817.
2137–0557	Approvals for Hazardous Materials	§§ 107.402, 107.403, 107.405, 107.502, 107.503, 107.705, 107.713, 107.715, 107.717, 107.803, 107.805, 107.807, 110.30, 172.101, 172.102, Special Provisions 19, 26, 53, 55, 60, 105, 118, 121, 125, 129, 131, 133, 136, B45, B55, B61, B69, B77, B81, N10, N72, 173.2a, 173.4, 173.7, 173.21, 173.22, 173.24, 173.31, 173.38, 173.51, 173.56, 173.58, 173.59, 173.124, 173.128, 173.159, 173.166, 173.169, 173.171, 173.214, 173.222, 173.224, 173.225, 173.245, 173.301, 173.305, 173.306, 173.314, 173.315, 173.316, 173.318, 173.334, 173.340, 173.411, 173.433, 173.457, 173.471, 173.472, 173.476, 174.50, 174.63, 175.8, 175.85, 175.701, 175.703, 176.168, 176.340, 176.704, 178.3, 178.35, 178.47, 178.53, 178.273, 178.274, 178.503, 178.509, 178.605, 178.606, 178.608, 178.801, 178.813, 180.213.

■ 3. In § 171.7, add paragraph (d)(8), and revise paragraphs (t)(1), (v)(2), (w), (bb)(1), and (dd) to read as follows:

§ 171.7 Reference material.

(d) * * *
(8) ANSI N14.1 Uranium Hexafluoride—Packaging for Transport, 2023 Edition, into §§ 173.417; 173.420.

(t) * * *

(1) ICAO Doc 9284 Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2025–2026 Edition, copyright 2024, into §§ 171.8; 171.22 through 171.24; 172.101; 172.202; 172.401; 172.407; 172.512; 172.519; 172.602; 173.56; 173.320; 175.10, 175.33; 178.3.

(v) * * *

(2) International Maritime Dangerous Goods Code (IMDG Code), Incorporating Amendment 42–24 (English Edition), 2024 Edition; 2024; into §§ 171.22; 171.23; 171.25; 172.101; 172.202; 172.203; 172.401; 172.407; 172.502; 172.519; 172.602; 173.21; 173.56; 176.2; 176.5; 176.11; 176.27; 176.30; 176.83; 176.84; 176.140; 176.720; 176.906; 178.3; 178.274.

(i) Volume 1, Incorporating Amendment 42–24 (Vol. 1).

(ii) Volume 2, Incorporating Amendment 42–24 (Vol. 2).

(w) *International Organization for Standardization*, Case Postale 56, CH–1211, Geneva 20, Switzerland, <http://www.iso.org>. Also available from: ANSI 25, West 43rd Street, New York, NY

10036, 1–212–642–4900, <http://www.ansi.org>.

(1) ISO 535–2014(E) Paper and board—Determination of water absorptiveness—Cobb method, 2014, Third edition, 2014–02, into §§ 178.707; 178.708; 178.516.

(2) ISO 1496–1:1990(E)—Series 1 freight containers—Specification and testing, Part 1: General cargo containers. Fifth Edition, (August 15, 1990), into § 173.411.

(3) ISO 1496–3(E)—Series 1 freight containers—Specification and testing—Part 3: Tank containers for liquids, gases and pressurized dry bulk, Fourth edition, March 1995, into §§ 178.74; 178.75; 178.274.

(4) ISO 1516:2002(E), Determination of flash/no flash—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(5) ISO 1523:2002(E), Determination of flash point—Closed cup equilibrium method, Third Edition, 2002–03–01, into § 173.120.

(6) ISO 2431–1984(E) Standard Cup Method, 1984, into § 173.121.

(7) ISO 2592:2000(E), Determination of flash and fire points—Cleveland open cup method, Second Edition, 2000–09–15, into § 173.120.

(8) ISO 2719:2002(E), Determination of flash point—Pensky-Martens closed cup method, Third Edition, 2002–11–15, into § 173.120.

(9) ISO 2919:1999(E), Radiation Protection—Sealed radioactive sources—General requirements and classification, (ISO 2919), second edition, February 15, 1999, into § 173.469.

(10) ISO 3036–1975(E) Board—Determination of puncture resistance, 1975, into § 178.708.

(11) ISO 3405:2000(E), Petroleum products—Determination of distillation characteristics at atmospheric pressure, Third Edition, 2000–03–01, into § 173.121.

(12) ISO 3574–1986(E) Cold-reduced carbon steel sheet of commercial and drawing qualities, into § 178.503; part 178, appendix C.

(13) ISO 3679:2004(E), Determination of flash point—Rapid equilibrium closed cup method, Third Edition, 2004–04–01, into § 173.120.

(14) ISO 3680:2004(E), Determination of flash/no flash—Rapid equilibrium closed cup method, Fourth Edition, 2004–04–01, into § 173.120.

(15) ISO 3807–2(E), Cylinders for acetylene—Basic requirements—Part 2: Cylinders with fusible plugs, First edition, March 2000, into §§ 173.303; 178.71.

(16) ISO 3807:2013(E), Gas cylinders—Acetylene cylinders—Basic requirements and type testing, Second edition, 2013–09–01, into §§ 173.303; 178.71.

(17) ISO 3924:1999(E), Petroleum products—Determination of boiling range distribution—Gas chromatography method, Second Edition, 1999–08–01, into § 173.121.

(18) ISO 4126–1:2004(E): Safety devices for protection against excessive pressure—Part 1: Safety valves, Second edition 2004–02–15, into § 178.274.

(19) ISO 4126–7:2004(E): Safety devices for protection against excessive pressure—Part 7: Common data, First Edition 2004–02–15 into § 178.274.

(20) ISO 4126–7:2004/Cor.1:2006(E): Safety devices for protection against excessive pressure—Part 7: Common data, Technical Corrigendum 1, 2006–11–01, into § 178.274.

(21) ISO 4626:1980(E), Volatile organic liquids—Determination of boiling range of organic solvents used as raw materials, First Edition, 1980–03–01, into § 173.121.

(22) ISO 4706:2008(E), Gas cylinders—Refillable welded steel cylinders—Test pressure 60 bar and below, First Edition, 2008–04–15, Corrected Version, 2008–07–01, into § 178.71.

(23) ISO 6406(E), Gas cylinders—Seamless steel gas cylinders—Periodic inspection and testing, Second edition, February 2005, into § 180.207.

(24) ISO 6892 Metallic materials—Tensile testing, July 15, 1984, First Edition, into § 178.274.

(25) ISO 7225(E), Gas cylinders—Precautionary labels, Second Edition, July 2005, into § 178.71.

(26) ISO 7866(E), Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing, First edition, June 1999, into § 178.71.

(27) ISO 7866:2012(E), Gas cylinders—Refillable seamless aluminum alloy gas cylinders—Design, construction and testing, Second edition, 2012–09–01, into § 178.71.

(28) ISO 7866:2012/Cor.1:2014(E), Gas cylinders—Refillable seamless aluminium alloy gas cylinders—Design, construction and testing, Technical Corrigendum 1, 2014–04–15, into § 178.71.

(29) ISO 8115 Cotton bales—Dimensions and density, 1986 Edition, into § 172.102.

(30) ISO 9809–1:1999(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., First edition, June 1999, into §§ 178.37; 178.71; 178.75.

(31) ISO 9809–1:2010(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 1: Quenched and tempered steel cylinders with tensile strength less than 1100 MPa., Second edition, 2010–04–15, into §§ 178.37; 178.71; 178.75.

(32) ISO 9809–1:2019(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 1: Quenched and tempered steel cylinders and tubes with tensile strength less than 1100 MPa, Third edition, 2019–08; into §§ 178.37; 178.71; 178.75.

(33) ISO 9809–2:2000(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., First

edition, June 2000; into §§ 178.71; 178.75.

(34) ISO 9809–2:2010(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 2: Quenched and tempered steel cylinders with tensile strength greater than or equal to 1100 MPa., Second edition, 2010–04; into §§ 178.71; 178.75.

(35) ISO 9809–2:2019(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 2: Quenched and tempered steel cylinders and tubes with tensile strength greater than or equal to 1100 MPa, Third edition, 2019–08; into §§ 178.71; 178.75.

(36) ISO 9809–3:2000(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, First edition, December 2000; into §§ 178.71; 178.75.

(37) ISO 9809–3:2010(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing—Part 3: Normalized steel cylinders, Second edition, 2010–04; into §§ 178.71; 178.75.

(38) ISO 9809–3:2019(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 3: Normalized steel cylinders and tubes, Third edition, 2019–08; into §§ 178.71; 178.75.

(39) ISO 9809–4:2014(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 4: Stainless steel cylinders with an R_m value of less than 1100 MPa, First edition, 2014–07; into §§ 178.71; 178.75.

(40) ISO 9809–4:2021(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 4: Stainless steel cylinders with an R_m value of less than 1100 MPa, Second edition, 2021–11; into §§ 178.71; 178.75.

(41) ISO 9978:1992(E)—Radiation protection—Sealed radioactive sources—Leakage test methods. First edition, (February 15, 1992); into § 173.469.

(42) ISO 10156:2017(E), Gas cylinders—Gases and gas mixtures—Determination of fire potential and oxidizing ability for the selection of cylinder valve outlets, Fourth edition, 2017–07; into § 173.115.

(43) ISO 10297:1999(E), Gas cylinders—Refillable gas cylinder valves—Specification and type testing, First edition, 1995–05; into §§ 173.301b; 178.71.

(44) ISO 10297:2006(E), Transportable gas cylinders—Cylinder valves—Specification and type testing, Second

edition, 2006–01; into §§ 173.301b; 178.71.

(45) ISO 10297:2014(E), Gas cylinders—Cylinder valves—Specification and type testing, Third edition, 2014–07; into §§ 173.301b; 178.71.

(46) ISO 10297:2014/Amd 1:2017(E), Gas cylinders—Cylinder valves—Specification and type testing—Amendment 1: Pressure drums and tubes, Third edition, 2017–03; into §§ 173.301b; 178.71.

(47) ISO 10461:2005(E), Gas cylinders—Seamless aluminum-alloy gas cylinders—Periodic inspection and testing, Second Edition, 2005–02 and Amendment 1, 2006–07; into § 180.207.

(48) ISO 10462:2013(E), Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance, Third edition, 2013–12; into § 180.207.

(49) ISO 10462:2013/Amd 1:2019(E), Gas cylinders—Acetylene cylinders—Periodic inspection and maintenance—Third edition, 2013–12, Amendment 1, 2019–06; into § 180.207.

(50) ISO 10692–2:2001(E), Gas cylinders—Gas cylinder valve connections for use in the micro-electronics industry—Part 2: Specification and type testing for valve to cylinder connections, First edition, 2001–08; into §§ 173.40; 173.302c.

(51) ISO 11114–1:2020(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 1: Metallic materials, Third edition, 2020–05; into §§ 172.102; 173.301b; 178.71.

(52) ISO 11114–2:2021(E), Gas cylinders—Compatibility of cylinder and valve materials with gas contents—Part 2: Non-metallic materials, Third edition, 2021–10; into §§ 173.301b; 178.71.

(53) ISO 11117:1998(E), Gas cylinders—Valve protection caps and valve guards for industrial and medical gas cylinders—Design, construction, and tests, First edition, 1998–08–01, into § 173.301b.

(54) ISO 11117:2008(E), Gas cylinders—Valve protection caps and valve guards—Design, construction, and tests, Second edition, 2008–09; into § 173.301b.

(55) ISO 11117:2008/Cor.1:2009(E), Gas cylinders—Valve protection caps and valve guards—Design, construction, and tests, Technical Corrigendum 1, 2009–05; into § 173.301b.

(56) ISO 11117:2019(E), Gas cylinders—Valve protection caps and guards—Design, construction and tests, 2019–11; into § 173.301b.

(57) ISO 11118(E), Gas cylinders—Non-refillable metallic gas cylinders—

Specification and test methods, First edition, October 1999; into § 178.71.

(58) ISO 11118:2015(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods, Second edition, 2015–09; into §§ 173.301b; 178.71.

(59) ISO 11118:2015/Amd 1:2019(E), Gas cylinders—Non-refillable metallic gas cylinders—Specification and test methods—Second edition, 2015–09–15—Amendment 1, Second Edition, 2019–10; into §§ 173.301b; 178.71.

(60) ISO 11119–1(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 1: Hoop-wrapped composite gas cylinders, First edition, May 2002; into § 178.71.

(61) ISO 11119–1:2012(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction, and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 L, Second edition, 2012–08; into §§ 178.71; 178.75.

(62) ISO 11119–1:2020(E), Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l, Third edition, 2020–05; into §§ 178.71; 178.75.

(63) ISO 11119–2(E), Gas cylinders—Gas cylinders of composite construction—Specification and test methods—Part 2: Fully wrapped fibre reinforced composite gas cylinders with load-sharing metal liners, First edition, May 2002; into § 178.71.

(64) ISO 11119–2:2012(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction, and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Second edition, 2012–07; into §§ 178.71; 178.75.

(65) ISO 11119–2:2012/Amd.1:2014(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Amendment 1, 2014–08; into §§ 178.71; 178.75.

(66) ISO 11119–2:2020(E), Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners, Third edition, 2020–11; into §§ 178.71; 178.75.

(67) ISO 11119–3(E), Gas cylinders of composite construction—Specification and test methods—Part 3: Fully wrapped fibre reinforced composite gas

cylinders with non-load-sharing metallic or non-metallic liners, First edition, September 2002; into § 178.71.

(68) ISO 11119–3:2013(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction and testing—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners, Second edition, 2013–04; into §§ 178.71; 178.75.

(69) ISO 11119–3:2020(E), Gas cylinders—Design, construction and testing of refillable composite gas cylinders and tubes—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners or without liners, Third edition, 2020–11; into §§ 178.71; 178.75.

(70) ISO 11119–4:2016(E), Gas cylinders—Refillable composite gas cylinders—Design, construction, and testing—Part 4: Fully wrapped fibre reinforced composite gas cylinders up to 150 l with load-sharing welded metallic liners, First edition, 2016–02; into §§ 178.71; 178.75.

(71) ISO 11120(E), Gas cylinders—Refillable seamless steel tubes for compressed gas transport, of water capacity between 150 l and 3000 l—Design, construction, and testing, First edition, 1999–03; into §§ 178.71; 178.75.

(72) ISO 11120:2015(E), Gas cylinders—Refillable seamless steel tubes of water capacity between 150 l and 3000 l—Design, construction, and testing, Second edition, 2015–02; into §§ 178.71; 178.75.

(73) ISO 11513:2011(E), Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection, First edition, 2011–09; into §§ 173.302c; 178.71; 180.207.

(74) ISO 11513:2019(E), Gas cylinders—Refillable welded steel cylinders containing materials for sub-atmospheric gas packaging (excluding acetylene)—Design, construction, testing, use and periodic inspection, Second edition, 2019–09; into §§ 173.302c; 178.71; 180.207.

(75) ISO 11621(E), Gas cylinders—Procedures for change of gas service, First edition, April 1997; into §§ 173.302, 173.336, 173.337.

(76) ISO 11623(E), Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, First edition, March 2002; into § 180.207.

(77) ISO 11623(E), Transportable gas cylinders—Periodic inspection and testing of composite gas cylinders, Second edition, 2015–12; into § 180.207.

(78) ISO 13340:2001(E), Transportable gas cylinders—Cylinder valves for non-refillable cylinders—Specification and prototype testing, First edition, 2004–04; into § 178.71.

(79) ISO 13736:2008(E), Determination of flash point—Abel closed-cup method, Second Edition, 2008–09; into § 173.120.

(80) ISO 14246:2014(E), Gas cylinders—Cylinder valves—Manufacturing tests and examination, Second Edition, 2014–06; into § 178.71.

(81) ISO 14246:2014/Amd 1:2017(E), Gas cylinders—Cylinder valves—Manufacturing tests and examinations—Amendment 1, Second edition, 2017–06; into § 178.71.

(82) ISO 15105–1:2007(E), Plastics—Film and sheeting—Determination of gas-transmission rate Part 1: Differential-pressure methods, Second edition, 2007–10, into § 172.102.

(83) ISO 16111:2008(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, First Edition, 2008–11; into §§ 173.301b; 173.311; 178.71.

(84) ISO 16111:2018(E), Transportable gas storage devices—Hydrogen absorbed in reversible metal hydride, Second edition, 2018–08; into §§ 173.301b; 173.311; 178.71.

(85) ISO 16148:2016(E), Gas cylinders—Refillable seamless steel gas cylinders and tubes—Acoustic emission examination (AT) and follow-up ultrasonic examination (UT) for periodic inspection and testing, Second edition, 2016–04; into § 180.207.

(86) ISO 16148:2016/Amd 1:2020(E), Gas cylinders—Refillable seamless steel gas cylinders and tubes—Acoustic emission examination (AT) and follow-up ultrasonic examination (UT) for periodic inspection and testing—Amendment 1, Second Edition, 2020–06; into § 180.207.

(87) ISO 17871:2015(E), Gas cylinders—Quick-release cylinder valves—Specification and type testing, First edition, 2015–08; into § 173.301b.

(88) ISO 17871:2020(E), Gas cylinders—Quick-release cylinder valves—Specification and type testing, Second edition, 2020–07; into § 173.301b.

(89) ISO 17879: 2017(E), Gas cylinders—Self-closing cylinder valves—Specification and type testing, First edition, 2017–07; into §§ 173.301b; 178.71.

(90) ISO 18172–1:2007(E), Gas cylinders—Refillable welded stainless steel cylinders—Part 1: Test pressure 6 MPa and below, First Edition, 2007–03–01; into § 178.71.

(91) ISO 20475:2018(E), Gas cylinders—Cylinder bundles—Periodic

inspection and testing, First edition, 2018–02; into § 180.207.

(92) ISO 20703:2006(E), Gas cylinders—Refillable welded aluminum-alloy cylinders—Design, construction and testing, First Edition, 2006–05; into § 178.71.

(93) ISO 21172–1:2015(E), Gas cylinders—Welded steel pressure drums up to 3,000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1000 litres, First edition, 2015–04, into § 178.71.

(94) ISO 21172–1:2015/Amd 1:2018(E), Gas cylinders—Welded steel pressure drums up to 3000 litres capacity for the transport of gases—Design and construction—Part 1: Capacities up to 1000 litres—First Edition, 2015–04, Amendment 1, 2018–11; into § 178.71.

(95) ISO 22434:2006(E), Transportable gas cylinders—Inspection and maintenance of cylinder valves, First edition, 2006–09; into § 180.207.

(96) ISO 23088:2020(E), Gas cylinders—Periodic inspection and testing of welded steel pressure drums—Capacities up to 1000 l, First edition, 2020–02; into § 180.207.

(97) ISO 23826:2021(E), Gas cylinders—Ball valves—Specification and testing, First edition, 2021–10, into §§ 173.301b and 178.71.

(98) ISO/TR 11364:2012(E), Gas cylinders—Compilation of national and international valve system/gas cylinder neck threads and their identification and marking system, First edition, 2012–12; into § 178.71.

* * * * *

(bb) * * *

(1) Transportation of Dangerous Goods Regulations (Transport Canada TDG Regulations), SOR 2001–286, as last amended on October 25, 2023, into §§ 107.801; 107.805; 171.12; 171.22; 171.23; 172.401; 172.407; 172.502; 172.519; 172.602; 173.31; 173.32; 173.33; 173.301; 180.205; 180.211; 180.212; 180.413.

* * * * *

(dd) *United Nations*, Bookshop, GA–1B–103, New York, NY 10017, 1–212–963–7680, <https://shop.un.org> or bookshop@un.org.

(1) UN Recommendations on the Transport of Dangerous Goods, Model Regulations (UN Recommendations), 23rd revised edition, (2023), into §§ 171.8; 171.12; 172.202; 172.401; 172.407; 172.502; 172.519; 173.22; 173.24; 173.24b; 173.40; 173.56; 173.192; 173.302b; 173.304b; 178.75; 178.274.

(i) Volume I, ST/SG/AC.10/1/Rev.23 (Vol. I).

(ii) Volume II, ST/SG/AC.10/1/Rev.23 (Vol. II).

(2) Manual of Tests and Criteria, Eighth Revised Edition, 2023, into §§ 171.24, 172.102; 173.21; 173.56; 173.57; 173.58; 173.60; 173.115; 173.124; 173.125; 173.127; 173.128; 173.137; 173.169; 173.185; 173.220; 173.221; 173.224; 173.225; 173.232; part 173, Appendix H; 175.10; 176.905; 178.274.

(3) Globally Harmonized System of Classification and Labelling of Chemicals (GHS), 10th revised edition, ST/SG/AC.10/30/Rev.10 (2023), into § 172.401.

(4) ADR 2025—Agreement concerning the International Carriage of Dangerous Goods by Road, copyright 2024; into §§ 171.8; 171.23 as follows:

(i) Volume I, ECE/TRANS/352/Vol.1 (Vol. I).

(ii) Volume II, ECE/TRANS/352/Vol.2 (Vol. II).

(5) UN/SCETDG/55/INF.27, United Nations' Recommendations on Test Series 8: Applicability of Test Series 8(d), June 14, 2019; into § 172.102(c)(1), Special Provision 148.

* * * * *

■ 4. In § 171.8, add “sodium ion cell or battery” in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Sodium ion cell or battery means a rechargeable electrochemical system, where the positive and negative electrodes are both intercalation or insertion compounds with no metallic sodium (or sodium alloy) in either electrode, and with an organic nonaqueous compound as electrolyte.

* * * * *

■ 5. In § 171.23, revise paragraph (b) to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(b) Conditions and requirements specific to certain materials—(1) *Aerosols*. Except for a limited quantity of a compressed gas in a container of not more than 4 fluid ounces capacity meeting the requirements in § 173.306(a)(1) of this subchapter, the proper shipping name “Aerosol,” UN1950, may be used only for a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure the sole purpose of which is to expel a nonpoisonous (other than Division 6.1, Packing Group III material) liquid, paste, or powder and

fitted with a self-closing release device (see § 171.8). In addition, an aerosol must be in a metal packaging when the packaging exceeds 7.22 cubic inches.

(2) *Chemical oxygen generators*. Chemical oxygen generators must be approved, classed, described, packaged, and transported in accordance with the requirements of this subchapter.

(3) *Class 1 (explosive) materials*. Prior to being transported, Class 1 (explosive) materials must be approved by the Associate Administrator in accordance with § 173.56 of this subchapter. Each package containing a Class 1 (explosive) material must conform to the marking requirements in § 172.320 of this subchapter.

(4) *Class 7 (radioactive) materials*. (i) Highway route-controlled quantities (see § 173.403 of this subchapter) must be shipped in accordance with §§ 172.203(d)(4) and (d)(10); 172.507, and 173.22(c) of this subchapter;

(ii) For fissile materials and Type B, Type B(U), and Type B(M) packagings, the competent authority certification and any necessary revalidation must be obtained from the appropriate competent authorities as specified in §§ 173.471, 173.472, and 173.473 of this subchapter, and all requirements of the certificates and revalidations must be met;

(iii) Type A package contents are limited in accordance with § 173.431 of this subchapter;

(iv) The country of origin for the shipment must have adopted the edition of SSR–6 of the IAEA Regulations referenced in § 171.7.

(v) The shipment must conform to the requirements of § 173.448, when applicable;

(vi) The definition for “radioactive material” in § 173.403 of this subchapter must be applied to radioactive materials transported under the provisions of this Subpart;

(vii) Except for limited quantities, the shipment must conform to the requirements of § 172.204(c)(4) of this subchapter; and

(viii) Excepted packages of radioactive material, instruments or articles, or articles containing natural uranium or thorium must conform to the requirements of § 173.421, § 173.424, or § 173.426 of this subchapter, as appropriate.

(ix) Packages containing fissile materials must conform to the requirements of § 173.453 to be otherwise excepted from the requirements of subpart I of part 173 for fissile materials.

Safety devices for vehicles, vessels, or aircraft, (e.g., air bag inflators, air bag modules, seatbelt pretensioners, and

pyromechanical devices). For each safety device, the shipping paper description must conform to the requirements in § 173.166(c) of this subchapter.

(5) *Fire suppressant dispersing devices*. Prior to being transported, fire suppressant dispersing devices of Class 1 and Class 9 must be approved by the Associate Administrator in accordance with §§ 173.56 and 173.169, respectively, of this subchapter. Each package containing a Class 1 (explosive) material must conform to the marking requirements in § 172.320 of this subchapter.

(6) *Hazardous substances*. A material meeting the definition of a hazardous substance as defined in § 171.8, must conform to the shipping paper requirements in § 172.203(c) of this subchapter and the marking requirements in § 172.324 of this subchapter:

(i) The proper shipping name must identify the hazardous substance by name, or the name of the substance must be entered in parentheses in association with the basic description and marked on the package in association with the proper shipping name. If the hazardous substance meets the definition for a hazardous waste, the waste code (for example, D001), may be used to identify the hazardous substance;

(ii) The shipping paper and the package markings must identify at least two hazardous substances with the lowest reportable quantities (RQs) when the material contains two or more hazardous substances; and

(iii) The letters “RQ” must be entered on the shipping paper either before or after the basic description, and marked on the package in association with the proper shipping name for each hazardous substance listed.

(7) *Hazardous wastes*. A material meeting the definition of a hazardous waste (see § 171.8) must conform to the following:

(i) The shipping paper and the package markings must include the word “Waste” immediately preceding the proper shipping name;

(ii) The shipping paper must be retained by the shipper and by each carrier for three years after the material is accepted by the initial carrier (see § 172.205(e)(5)); and

(iii) A hazardous waste manifest must be completed in accordance with § 172.205 of this subchapter.

(8) *Marine pollutants*. Except for marine pollutants (see § 171.8) transported in accordance with the IMDG Code, marine pollutants transported in bulk packages must meet

the shipping paper requirements in § 172.203(l) of this subchapter and the package marking requirements in § 172.322 of this subchapter.

(9) *Organic peroxides*. Organic peroxides not identified by technical name in the Organic Peroxide Table in § 173.225(c) of this subchapter must be approved by the Associate Administrator in accordance with § 173.128(d) of this subchapter.

(10) *Poisonous by inhalation materials*. A material poisonous by inhalation (see § 171.8) must conform to the following requirements:

(i) The words “Poison-Inhalation Hazard” or “Toxic-Inhalation Hazard” and the words “Zone A,” “Zone B,” “Zone C,” or “Zone D” for gases, or “Zone A” or “Zone B” for liquids, as appropriate, must be entered on the shipping paper immediately following the basic shipping description. The word “Poison” or “Toxic” or the phrase “Poison-Inhalation Hazard” or “Toxic-Inhalation Hazard” need not be repeated if it otherwise appears in the shipping description;

(ii) The material must be packaged in accordance with the requirements of this subchapter;

(iii) The package must be marked in accordance with § 172.313 of this subchapter; and

(iv) Except as provided in subparagraph (B) of this paragraph (b)(10)(iv) and for a package containing anhydrous ammonia prepared in accordance with the Transport Canada TDG Regulations, the package must be labeled or placarded with POISON INHALATION HAZARD or POISON GAS, as appropriate, in accordance with subparts E and F of part 172 of this subchapter.

(A) For a package transported in accordance with the IMDG Code in a closed transport vehicle or freight container, a label or placard conforming to the IMDG Code specifications for a “Class 2.3” or “Class 6.1” label or placard may be substituted for the POISON GAS or POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter.

(B) For a package transported in accordance with the Transport Canada TDG Regulations in a closed transport vehicle or freight container, a label or placard conforming to the TDG Regulations specifications for a “Class 2.3” or “Class 6.1” label or placard may be substituted for the POISON GAS or

POISON INHALATION HAZARD label or placard, as appropriate. The transport vehicle or freight container must be marked with the identification numbers for the hazardous material in the manner specified in § 172.313(c) of this subchapter and placarded as required by subpart F of part 172 of this subchapter. While in transportation in the United States, the transport vehicle or freight container may also be placarded in accordance with the appropriate TDG Regulations in addition to being placarded with the POISON GAS or POISON INHALATION HAZARD placards.

(11) [Reserved]

(12) *Safety devices for vehicles, vessels, or aircraft, e.g., air bag inflators, air bag modules, seatbelt pretensioners, and pyromechanical devices*. For each safety device, the shipping paper description must conform to the requirements in § 173.166(c) of this subchapter.

(13) *Self-reactive materials*. Self-reactive materials not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with § 173.124(a)(2)(iii) of this subchapter.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96, and 1.97.

■ 6. In § 172.101:

■ a. In the Hazardous Materials Table, amend by removing the entries under “[REMOVE]” and by adding the entries under “[ADD]” in the appropriate alphabetical sequence.

■ b. In appendix B, revise the List of Marine Pollutants by adding entries for Cobalt dihydroxide powder, *containing more than 10 percent respirable particles*, Isopropenylbenzene, and 2-phenylpropene in alphabetical order. The additions and revisions read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

§ 172.101 Hazardous Materials Table.

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§172.102)	(8) Packaging (§173.***)			(9) Quantity limitations (see §§173.27 and 175.75)		(10) Vessel stowage	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REMOVE].												
	Aircraft hydraulic power unit fuel tank (containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel).	3	UN3165	I	3, 6.1, 8		None	172	None	Forbidden	42 L	E	21, 40, 49, 100.
	Alkali metal dispersions, flammable or Alkaline earth metal dispersions, flammable.	4.3	UN3482	I	4.3, 3	A2, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148.
	Alkali metal dispersions, or Alkaline earth metal dispersions.	4.3	UN1391	I	4.3	A2, A7, W31	None	201	244	Forbidden	1 L	D	13, 52, 148.
	Ammonium nitrate-based fertilizer	5.1	UN2067	III	5.1	52, 148, 150, B120, IB8, IP3, T1, TP33.	152	213	240	25 kg	100 kg	B	25, 59, 60, 66, 117, 124.*
	Ammonium nitrate, liquid (hot concentrated solution).	5.1	UN2426		5.1	148, B5, T7	None	None	243	Forbidden	Forbidden	D	59, 60, 124.
	Argon, compressed	2.2	UN1006		2.2		306, 307	302	314, 315	75 kg	150 kg	A.	
	Batteries, containing sodium	4.3	UN3292		4.3		189	189	189	Forbidden	400 kg	A	13, 148.
	Batteries, wet, filled with alkali, electric storage.	8	UN2795		8	A51	159	159	159	30 kg	400 kg	A	52, 146.
	Bombs, smoke, non-explosive, with corrosive liquid, without initiating device.	8	UN2028	II	8		None	160	None	Forbidden	50 kg	E	40.
	Butadienes stabilized or Butadienes and Hydrocarbon mixture, stabilized containing more than 40% butadienes.	2.1	UN1010		2.1	387, T50	306	304	314, 315	Forbidden	150 kg	B	25, 40.
	Carbon dioxide	2.2	UN1013		2.2		306	302, 304	302, 314, 315	75 kg	150 kg	A.	
	Cells, containing sodium	4.3	UN3292		4.3		189	189	189	25 kg	No limit	A.	
	1-Chloropropane	3	UN1278	II	3	IB2, IP8, N34, T7, TP2	150	202	242	Forbidden	60 L	E.	
	Cyclopentene	3	UN2246	II	3	IB2, IP8, T7, TP2	150	202	242	5 L	60 L	E.	
	Dichloromethane	6.1	UN1593	III	6.1	IB3, IP8, N36, T7, TP2	153	203	241	60 L	220 L	A.	
	Dimethyl sulfide	3	UN1164	II	3	IB2, IP8, T7, TP2	150	202	242	5 L	60 L	E	40.
	Ethyl bromide	3	UN1891	II	3, 6.1	IB2, IP8, T7, TP2, TP13.	150	202	243	1 L	60 L	B	40, 85.
	Gallium	8	UN2803	III	8	T1, TP33	154	162	240	20 kg	20 kg	B	25.
	Glycidialdehyde	3	UN2622	II	3, 6.1	IB2, IP8, T7, TP1	150	202	243	1 L	60 L	A	40.

Helium, compressed	2.2	UN1046	*	*	2.2	*	*	306, 307	302	*	302, 314	75 kg	150 kg	A	85.
Hypochlorite solutions	8	UN1791	*	*	II	8	*	148, A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24.	202	*	242	1 L	30 L	B	26.
			III	8	8	*	*	386, IB3, N34, T4, TP2, TP24.	203	241	241	5 L	60 L	B	26, 53, 58.
Isohexenes	3	UN2288	*	*	II	3	*	IB2, IP8, T11, TP1	202	242	242	5 L	60 L	E.	
Isopropylbenzene	3	UN2303	*	*	III	3	*	B1, IB3, T2, TP1	203	242	242	60 L	220 L	A.	
Isosorbide dinitrate mixture with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate.	401	UN2907	*	*	II	401	*	IB6, IP2, N85	212	None	None	15 kg	50 kg	E	28, 36.
Lithium batteries installed in cargo transport unit lithium ion batteries or lithium metal batteries.	9	UN3536	*	*			*	389		*		Forbidden	Forbidden	A.	
Lithium ion batteries contained in equipment including lithium ion polymer batteries.	9	UN3481	*	*		9	*	181, 360, 388, 422, A54.	185	185	185	5 kg	35 kg	A	156.
Lithium ion batteries packed with equipment including lithium ion polymer batteries.	9	UN3481	*	*		9	*	181, 360, 388, 422, A54.	185	185	185	5 kg	35 kg	A	156.
2-Methyl-2-butene	3	UN2460	*	*	II	3	*	IB2, IP8, T7, TP1	202	242	242	5 L	60 L	E.	
Methyl propyl ether	3	UN2612	*	*	II	3	*	IB2, IP8, T7, TP2	202	242	242	5 L	60 L	E	40.
Methylal	3	UN1234	*	*	II	3	*	IB2, IP8, T7, TP2	202	242	242	5 L	60 L	E.	
Nitrocellulose, solution, flammable with not more than 12.6% nitrogen, by mass, and not more than 55 percent nitrocellulose.	3	UN2059	*	*	I	3	*	198, T11, TP1, TP8, TP27.	201	243	243	1 L	30 L	E.	
Nitrocellulose, solution, flammable with not more than 12.6% nitrogen, by mass, and not more than 55 percent nitrocellulose.	3	UN2059	*	*	II	3	*	198, IB2, T4, TP1, TP8	202	242	242	5L	60L	B.	
Nitrocellulose, solution, flammable with not more than 12.6% nitrogen, by mass, and not more than 55 percent nitrocellulose.	3	UN2059	*	*	III	3	*	198, B1, IB3, T2, TP1	203	242	242	60L	220L	A.	
Nitrocellulose with alcohol with not less than 25% alcohol by mass, and with not more than 12.6% nitrogen, by dry mass.	4.1	UN2556	*	*	II	4.1	*	W31	212	None	None	1 kg	15 kg	D	12, 25, 28, 36.
Nitrocellulose with water with not less than 25% water, by mass.	4.1	UN2555	*	*	II	4.1	*	W31	212	None	None	15 kg	50 kg	E	28, 36.
Nitrogen, compressed	2.2	UN1066	*	*		2.2	*		306, 307	302	314, 315	75 kg	150 kg	A.	
Nitroglycerin mixture, desensitized, liquid, flammable, n.o.s. with not more than 30 percent nitroglycerin, by mass.	3	UN3343	*	*		3	*	129	214	None	None	Forbidden	Forbidden	D.	
Nitroglycerin mixture, desensitized, liquid, n.o.s. with not more than 30% nitroglycerin, by mass.	3	UN3357	*	*	II	3	*	142	202	243	243	5 L	60 L	E.	
Nitroglycerin mixture, desensitized, solid, n.o.s. with more than 2% but not more than 10% nitroglycerin, by mass.	4.1	UN3319	*	*	II	4.1	*	118	None	None	None	Forbidden	0.5 kg	E.	

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)			(10) Vessel stowage	
							Excep- tions	Non-bulk	Bulk	Passenger aircraft/ rail	Cargo aircraft only	Location		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)	
	Nitroglycerin, solution in alcohol, with more than 1 percent but not more than 5 percent nitroglycerin.	3	UN3064	II	3	N8	None	202	None	Forbidden	5 L	E		
	Nitroglycerin solution in alcohol with not more than 1% nitroglycerin.	3	UN1204	II	3	IB2, N34	150	202	None	5 L	60 L	B		
	Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. or Pentaerythritol tetranitrate mixture, desensitized, solid, n.o.s. or PETN mixture, desensitized, solid, n.o.s., with more than 10% but not more than 20% PETN, by mass.	4.1	UN3344	II	4.1	118, N85	None	214	None	Forbidden	Forbidden	E		
	Pentanes	3	UN1265	I	3	T11, TP2	150	201	243	1 L	30 L	E		
				II	3	IB2, IP8, T4, TP1	150	202	242	5 L	60 L	E		
	Tetramethylammonium hydroxide, solid	8	UN3423	II	8	B2, IB8, IP2, IP4, T3, TP33	154	213	240	15 kg	50 kg	A	52	
	Tetramethylammonium hydroxide solution	8	UN1835	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	52	
				III	8	B2, IB3, T7, TP2	154	203	241	5 L	60 L	A	52	
G	Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	I	4.3, 8	T14, TP2, TP7, TP13	None	201	243	Forbidden	1 L	D	13, 148	
				II	4.3, 8	IB1, T11, TP2, TP7	151	202	243	1 L	5 L	E	13, 85, 148	
				III	4.3, 8	IB2, T7, TP2, TP7	151	203	242	5 L	60 L	E	13, 85, 148	
G	Water-reactive liquid, n.o.s.	4.3	UN3148	I	4.3	T13, TP2, TP7, W31	None	201	244	Forbidden	1 L	E	13, 40, 148	
				II	4.3	IB1, T7, TP2, TP7, W31	151	202	243	1 L	5 L	E	13, 40, 148	
				III	4.3	IB2, T7, TP2, TP7, W31	151	203	242	5 L	60 L	E	13, 40, 148	
				I	4.3, 6.1	A4	None	201	243	Forbidden	1 L	D	13, 148	
				II	4.3, 6.1	IB1	151	202	243	1 L	5 L	E	13, 85, 148	
				III	4.3, 6.1	IB2	151	203	242	5 L	60 L	E	13, 85, 148	
	[ADD].													
	Aircraft hydraulic power unit fuel tank (containing a mixture of anhydrous hydrazine and monomethyl hydrazine) (M86 fuel).	3	UN3165		3, 6.1, 8		None	172	None	Forbidden	42 L	E	21, 40, 49, 100.	
	Alkali metal dispersions, flammable or Alkali earth metal dispersions, flammable.	4.3	UN3482	I	4.3, 3	64, 65, A2, A7, T13, TP2, TP7, TP42, W31	None	201	244	Forbidden	1 L	D	13, 52, 148.	
	Alkali metal dispersions, or Alkaline earth metal dispersions.	4.3	UN1391	I	4.3	64, 65, A2, A7, T13, TP2, TP7, TP42, W31	None	201	244	Forbidden	1 L	D	13, 52, 148.	
	Ammonium nitrate-based fertilizer	5.1	UN2067	III	5.1	52, 148, 150, B120, IB8, IP3, T1, TP33	152	213	240	25 kg	100 kg	B	25, 59, 60, 66, 116, 117, 124.	
	Ammonium nitrate, liquid (hot concentrated solution).	5.1	UN2426		5.1	148, 252, B5, T7	None	None	243	Forbidden	Forbidden	D	59, 60, 124.	

Argon, compressed	2.2	UN1006	*	*	2.2	*	406	*	306, 307	302	314, 315	*	75 kg	150 kg	A.
Batteries, containing metallic sodium or sodium alloy.	4.3	UN3292	*	*	4.3	*	401	*	189	189	189	*	Forbidden	400 kg	A
Batteries, wet, filled with alkali, electric storage.	8	UN2795	*	*	8	*	401, A51	*	159	159	159	*	30 kg	400 kg	A
Bombs, smoke, nonexplosive, with corrosive liquid, without initiating device.	8	UN2028	*	*	8	*		*	None	160	None	*	Forbidden	50 kg	E
Butadienes, stabilized or Butadienes and Hydrocarbon mixtures, stabilized containing more than 20 percent butadienes.	2.1	UN1010	*	*	2.1	*	387, 402, T50	*	306	304	314, 315	*	Forbidden	150 kg	B
Carbon dioxide	2.2	UN1013	*	*	2.2	*	406	*	306	302, 304	302, 314, 315	*	75 kg	150 kg	A.
Cells, containing metallic sodium or sodium alloy.	4.3	UN3292	*	*	4.3	*	401	*	189	189	189	*	25 kg	No Limit	A.
1-Chloropropane	3	UN1278	*	*	3	*	IB2, N34, T7, TP2	*	150	202	242	*	Forbidden	60 L	E.
Cyclopentene	3	UN2246	*	*	3	*	IB2, T7, TP2	*	150	202	242	*	5 L	60 L	E.
Dichloromethane	6.1	UN1593	*	*	6.1	*	IB3, N36, T7, TP2	*	153	203	241	*	60 L	220 L	A.
Dimethyl sulfide	3	UN1164	*	*	3	*	IB2, T7, TP2	*	150	202	242	*	5 L	60 L	E
Disilane	2.1	UN3553	*	*	2.1	*		*	None	304	None	*	Forbidden	Forbidden	D
Ethyl bromide	3	UN1891	*	*	3, 6.1	*	IB2, T7, TP2, TP13	*	150	202	243	*	1 L	60 L	B
Fire suppressant dispersing devices	1.4S	UN0514	*	*	1.4S	*	A200	*	None	62, 169	None	*	25 kg	100 kg	A
Fire suppressant dispersing devices	9	UN3559	*	*	9	*	A200	*	None	169	None	*	25 kg	100 kg	A.
Gallium	8	UN2803	*	*	8	*	365, T1, TP33	*	154	162	240	*	20 kg	20 kg	B
Gallium contained in manufactured articles	8	UN3554	*	*	8	*		*	162	None	None	*	No limit	No limit	B
Glycidialdehyde	3	UN2622	*	*	3, 6.1	*	IB2, T7, TP1	*	150	202	243	*	1 L	60 L	A
Helium, compressed	2.2	UN1046	*	*	2.2	*	406	*	306, 307	302	302, 314	*	75 kg	150 kg	A
Hypochlorite Solutions	8	UN1791	*	*	8	*	148, A7, B2, B15, IB2, IP5, N34, T7, TP2, TP24, 386, IB3, N34, T4, TP2, TP24.	*	154	202	242	*	1 L	30 L	B
Isohexenes	3	UN2288	*	*	3	*	IB2, T11, TP1	*	150	202	242	*	5 L	60 L	E.
Isopropylbenzene	3	UN2303	*	*	3	*	B1, IB3, T2, TP1	*	150	203	242	*	60 L	220 L	A

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Isosorbide dinitrate mixture with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate.	401	UN2907	II	401	162, IB6, IP2, N85	None	212	None	15 kg	50 kg	E	28, 36.
	Lithium batteries installed in cargo transport unit lithium ion batteries or lithium metal batteries.	9	UN3536			389				Forbidden	Forbidden	D	25, 40.
	Lithium ion batteries contained in equipment including lithium ion polymer batteries.	9	UN3481		9	181, 360, 388, 422, A54, A100.	185	185		5 kg	35 kg	A	156.
	Lithium ion batteries packed with equipment including lithium ion polymer batteries.	9	UN3481		9	181, 360, 388, 422, A54, A100.	185	185		5 kg	35 kg	A	156.
	2-Methyl-2-butene	3	UN2460	II	3	IB2, T7, TP1	150	202	242	5 L	60 L	E.	
	Methyl propyl ether	3	UN2612	II	3	IB2, T7, TP2	150	202	242	5 L	60 L	E	40.
	Methylal	3	UN1234	II	3	IB2, T7, TP2	150	202	242	5 L	60 L	E.	
	Nitrocellulose, solution, flammable with not more than 12.6% nitrogen, by mass, and not more than 55% nitrocellulose.	3	UN2059	I	3	162, 198, T11, TP1, TP8, TP27.	None	201	243	1 L	30 L	E.	
	Nitrocellulose with alcohol with not less than 25% alcohol by mass, and with not more than 12.6% nitrogen, by dry mass.	4.1	UN2556	II	4.1	162, 197, W31	None	212	None	1 kg	15 kg	D	12, 25, 28, 36.
	Nitrocellulose with water with not less than 25% water, by mass.	4.1	UN2555	II	4.1	162, 197, W31	None	212	None	15 kg	50 kg	E	28, 36.
	Nitrogen, compressed	2.2	UN1066		2.2	406	306, 307	302	314, 315	75 kg	150 kg	A.	
	Nitroglycerin mixture, desensitized, liquid, flammable, n.o.s. with not more than 30 percent nitroglycerin, by mass.	3	UN3343		3	129, 162	None	214	None	Forbidden	Forbidden	D.	
	Nitroglycerin mixture, desensitized, liquid, n.o.s. with not more than 30% nitroglycerin, by mass.	3	UN3357	II	3	142, 162	None	202	243	5 L	60 L	E.	
	Nitroglycerin mixture, desensitized, solid, n.o.s. with more than 2% but not more than 10% nitroglycerin, by mass.	4.1	UN3319	II	4.1	118, 162	None	None	None	Forbidden	0.5 kg	E.	
	Nitroglycerin, solution in alcohol, with more than 1 percent but not more than 5 percent nitroglycerin.	3	UN3064	II	3	162, N8	None	202	None	Forbidden	5 L	E.	
	Nitroglycerin solution in alcohol with not more than 1% nitroglycerin.	3	UN1204	II	3	162, IB2, N34	150	202	None	5 L	60 L	B.	

Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. or Pentaerythritol tetranitrate mixture, desensitized, solid, n.o.s. or PETN mixture, desensitized, solid, n.o.s., with more than 10% but not more than 20% PETN, by mass.	4.1	UN3344	.....	II	.....	4.1	.....	*	.....	118, 162, N85	.....	*	.....	214	.....	*	.....	None	.....	243	.....	242	.....	1 L	.....	30 L	.....	E.
	3	UN1265	.....	I	.....	3	.....	*	.....	T11, TP2	.....	*	.....	201	.....	*	.....	150	.....	243	.....	242	.....	1 L	.....	30 L	.....	E.
Pentanes	3	UN1265	.....	II	.....	3	.....	*	.....	IB2, T4, TP1	.....	*	.....	202	.....	*	.....	150	.....	243	.....	242	.....	5 L	.....	60 L	.....	E.
Sodium ion batteries with organic electrolyte.	9	UN3551	.....	.....	.....	9	.....	*	.....	400, 401, 422, A54, A100.	.....	*	.....	185	.....	*	.....	185	.....	185	.....	185	.....	Forbidden	.....	35 kg	.....	156.
	9	UN3552	.....	.....	.....	9	.....	*	.....	181, 360, 400, 401, 422, A54, A100.	.....	*	.....	185	.....	*	.....	185	.....	185	.....	185	.....	5 kg	.....	35 kg	.....	156.
	9	UN3552	.....	.....	.....	9	.....	*	.....	181, 360, 400, 401, 422, A54, A100.	.....	*	.....	185	.....	*	.....	185	.....	185	.....	185	.....	5 kg	.....	35 kg	.....	156.
	8	UN1835	.....	II	.....	8, 6.1	.....	*	.....	408, 409, B2, IB2, T7, TP2.	.....	*	.....	202	.....	*	.....	154	.....	243	.....	243	.....	1 L	.....	30 L	.....	52.
Tetramethylammonium hydroxide aqueous solution with more than 2.5% but less than 25% tetramethylammonium hydroxide.	8	UN1835	.....	III	.....	8	.....	*	.....	408, 409, B2, IB3, T7, TP2.	.....	*	.....	203	.....	*	.....	154	.....	241	.....	241	.....	5 L	.....	60 L	.....	52.
	6.1	UN3560	.....	I	.....	6.1, 8	.....	*	.....	408, 409, B2, T14, TP2	.....	*	.....	201	.....	*	.....	None	.....	243	.....	243	.....	0.5 L	.....	2.5 L	.....	52.
	6.1	UN3423	.....	I	.....	6.1, 8	.....	*	.....	409, B2, IB7, IP1, T6, TP33.	.....	*	.....	211	.....	*	.....	None	.....	242	.....	242	.....	1 kg	.....	15 kg	.....	52.
Trifluoromethyltetrazole-sodium salt in acetone, with not less than 68% acetone, by mass.	3	UN3555	.....	II	.....	3	.....	*	.....	74, 162, 234	.....	*	.....	None	.....	*	.....	None	.....	None	.....	None	.....	Forbidden	.....	Forbidden	.....	12, 25, 158, 159.
	9	UN3556	.....	.....	.....	9	.....	*	.....	134, 135, 360, A100	.....	*	.....	220	.....	*	.....	220	.....	None	.....	None	.....	No limit	.....	No limit	.....	A.
Vehicle, lithium ion battery powered	9	UN3557	.....	.....	.....	9	.....	*	.....	134, 135, 360, A100	.....	*	.....	220	.....	*	.....	220	.....	None	.....	None	.....	No limit	.....	No limit	.....	A.
Vehicle, sodium ion battery powered	9	UN3558	.....	.....	.....	9	.....	*	.....	134, 135, 360, A100	.....	*	.....	220	.....	*	.....	220	.....	None	.....	None	.....	No limit	.....	No limit	.....	A.
Water-reactive liquid, corrosive, n.o.s.	4.3	UN3129	.....	I	.....	4.3, 8	.....	*	.....	T14, TP2, TP7, TP13	.....	*	.....	201	.....	*	.....	None	.....	243	.....	243	.....	Forbidden	.....	1 L	.....	13, 148, 160.
	4.3	UN3148	.....	III	.....	4.3, 8	.....	*	.....	IB1, T11, TP2, TP7	.....	*	.....	202	.....	*	.....	151	.....	243	.....	243	.....	1 L	.....	5 L	.....	13, 148, 160.
Water-reactive liquid, n.o.s.	4.3	UN3148	.....	I	.....	4.3	.....	*	.....	IB2, T7, TP2, TP7	.....	*	.....	203	.....	*	.....	151	.....	243	.....	243	.....	5 L	.....	60 L	.....	13, 148, 160.
	4.3	UN3148	.....	II	.....	4.3	.....	*	.....	T13, TP2, TP7, W31	.....	*	.....	201	.....	*	.....	None	.....	244	.....	244	.....	Forbidden	.....	1 L	.....	13, 40, 148, 160.
Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	.....	III	.....	4.3	.....	*	.....	IB1, T7, TP2, TP7, W31.	.....	*	.....	202	.....	*	.....	151	.....	243	.....	243	.....	1 L	.....	5 L	.....	13, 40, 148, 160.
	4.3	UN3130	.....	II	.....	4.3, 6.1	.....	*	.....	IB2, T7, TP2, TP7, W31.	.....	*	.....	203	.....	*	.....	151	.....	242	.....	242	.....	5 L	.....	60 L	.....	13, 40, 148, 160.
Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	.....	I	.....	4.3, 6.1	.....	*	.....	A4	.....	*	.....	201	.....	*	.....	None	.....	243	.....	243	.....	Forbidden	.....	1 L	.....	13, 148, 160.
	4.3	UN3130	.....	III	.....	4.3, 6.1	.....	*	.....	IB1	.....	*	.....	202	.....	*	.....	151	.....	243	.....	243	.....	1 L	.....	5 L	.....	13, 148, 160.
Water-reactive liquid, toxic, n.o.s.	4.3	UN3130	.....	II	.....	4.3, 6.1	.....	*	.....	IB2	.....	*	.....	203	.....	*	.....	151	.....	242	.....	242	.....	5 L	.....	60 L	.....	13, 148, 160.
	4.3	UN3130		III		4.3, 6.1		*		IB2		*		203		*		151		242		242		5 L		60 L		13, 148, 160.

* * * * *

Appendix B to § 172.101—List of Marine Pollutants

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LIST OF MARINE POLLUTANTS				
S.M.P. (1)		Marine pollutant (2)		
* * *		Cobalt dihydroxide powder, <i>containing more than 10 percent respirable particles.</i>		
* * *		Isopropenylbenzene.		
* * *		2-phenylpropene.		

* * * * *

- 7. In § 172.102:
- a. In paragraph (c)(1), revise special provisions 43, 160, 162, 181, 360, 365, 371, 379, and 389 and add special provisions 134, 234, 252, 328, 400, 401, 402, 406, 408 and 409 in numerical order;
- b. In paragraph (c)(2), revise special provisions A54 and A100;
- c. In paragraph (c)(4), rename “Table 2—IP Codes” to “Table 2 to Paragraph (c)(4)—IP Codes” and revise the renamed table; and
- d. In paragraph (c)(8), add special provision TP42;

The additions and revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *
(1) * * *

43 The membrane filters, including paper separators and coating or backing materials, that are present in transport, must not be able to propagate a detonation as tested by one of the tests described in the UN Manual of Tests and Criteria, Part I, Test series 1(a) (IBR, see § 171.7 of this subchapter). On the basis of the results of suitable burning rate tests, and taking into account the standard tests in the UN Manual of Tests and Criteria, Part III, subsection 33.2.1 (IBR, see § 171.7 of this subchapter), nitrocellulose membrane filters in the form in which they are to be transported that do not meet the criteria for a Division 4.1 material are not subject to the requirements of this subchapter. Packagings must be so constructed that explosion is not possible by reason of increased internal pressure. Nitrocellulose membrane filters covered by this entry, each with

a mass not exceeding 0.5 g, are not subject to the requirements of this subchapter when contained individually in an article or a sealed packet. Nitrocellulose membrane filters with a nitrocellulose content not exceeding 53 g/m² and a nitrocellulose net mass not exceeding 300 g per inner packaging are not subject to the requirements of this subchapter subject to the following conditions:

a. Membrane filters are packed with paper separators of minimum 80 g/m² placed between each layer of nitrocellulose membrane filters;

b. Membrane filters are packed to maintain the alignment of the nitrocellulose membrane filters and the paper separators in any of the following configurations:

i. Rolls tightly wound and packed in plastic foil of minimum 80 g/m² or aluminum pouches with an oxygen permeability of equal or less than 0.1 percent according to ISO 15105 part 1 (IBR; see § 171.7 of this subchapter);

ii. Sheets packed in cardboard of minimum 250 g/m² or aluminum pouches with an oxygen permeability of equal or less than 0.1 percent according to standard ISO 15105 part 1 (IBR; see § 171.7 of this subchapter), or;

iii. Round filters packed in disc holders or cardboard packaging of minimum 250 g/m² or single packed in pouches of paper and plastic material of total minimum 100 g/m².

* * * * *

134 The UN3171 entry only applies to vehicles powered by wet batteries, and equipment powered by wet batteries that are transported with these batteries installed.

a. For the purpose of this special provision, vehicles are self-propelled apparatus designed to carry one or more persons or goods. Examples of such vehicles are electrically powered cars, motorcycles, scooters, three- and four-wheeled vehicles or motorcycles, trucks, locomotives, bicycles (pedal cycles with an electric motor) and other vehicles of this type (e.g., self-balancing vehicles or vehicles not equipped with at least one seating position), lawn tractors, self-propelled farming and construction equipment, boats, aircraft, wheelchairs and other mobility aids. This includes vehicles transported in a packaging. In this case, some parts of the vehicle may be detached from its frame to fit into the packaging.

b. Vehicles powered by lithium ion batteries, lithium metal batteries, or sodium ion batteries must be appropriately described using table entries “UN3556, Vehicle, lithium ion battery powered,” “UN3557, Vehicle

lithium metal battery powered,” or “UN3558, Vehicle sodium ion battery powered,” respectively.

c. Examples of equipment are lawnmowers, cleaning machines, or model boats and model aircraft. Equipment powered by lithium metal batteries or lithium ion batteries must be assigned to the entries “UN3091, Lithium metal batteries contained in equipment” or “UN3091, Lithium metal batteries packed with equipment” or “UN3481, Lithium ion batteries contained in equipment” or “UN3481, Lithium ion batteries packed with equipment” as appropriate. Equipment powered by sodium ion batteries must be assigned to the entries “UN3552, Sodium ion batteries contained in equipment” or “UN3552, Sodium ion batteries packed with equipment” as appropriate.

d. Self-propelled vehicles or equipment that also contain an internal combustion engine must be assigned to the entries “UN3529, Engine, internal combustion, flammable gas powered” or “UN3528, Engine, internal combustion, flammable liquid powered” or “UN3166, Vehicle, flammable gas powered” or “UN3166 Vehicle, flammable liquid powered,” as appropriate. These entries include hybrid electric vehicles powered by both an internal combustion engine and batteries. In addition, self-propelled vehicles or equipment that contain a fuel cell engine must be assigned to the entries “UN3529, Engine, fuel cell, flammable gas powered” or “UN3528, Engine, fuel cell, flammable liquid powered” or “UN3166, Vehicle, fuel cell, flammable gas powered” or “UN3166, Vehicle, fuel cell, flammable liquid powered,” as appropriate. These entries include hybrid electric vehicles powered by a fuel cell engine, an internal combustion engine, and batteries.

e. Lithium batteries installed in cargo transport units, designed only to provide power external to the transport unit, must be described and classified using the table entry “UN3536, Lithium batteries installed in cargo transport unit.”

* * * * *

160 This entry applies to safety devices for vehicles, vessels, or aircraft, e.g., air bag inflators, air bag modules, seatbelt pretensioners, and pyromechanical devices containing Class 1 (explosive) materials or materials of other hazard classes. These articles must be tested in accordance with Test Series 6(c) of part I of the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter), with no

explosion of the device, no fragmentation of device casing or pressure vessel, and no projection hazard or thermal effect that would significantly hinder firefighting or other emergency response efforts in the immediate vicinity. If the air bag inflator unit satisfactorily passes the series 6(c) test, it is not necessary to repeat the test on the air bag module. This entry does not apply to fire suppressant dispersing devices as described in § 173.169 (UN3559), nor to life-saving appliances described in § 173.219 (UN2990 and UN3072).

162 This material may be transported under the provisions of Class 3 or Division 4.1, as appropriate, only if it is packed so that, during the course of transportation, the percentage of diluent will not fall below the percentage stated in the shipping description. In cases where the diluent is not stated, the substance shall be packed so that the amount of explosive substance does not exceed the stated value.

* * * * *

181 When a package contains combinations of lithium batteries or sodium ion batteries contained in equipment and lithium batteries or sodium ion batteries packed with equipment, the following requirements apply:

a. The shipper must ensure that all applicable requirements of § 173.185 of this subchapter are met. The total mass of lithium batteries or sodium ion batteries contained in any package must not exceed the quantity limits in columns (9A) and (9B) for passenger aircraft or cargo aircraft, as applicable;

b. Except as provided in § 173.185(c)(3) of this subchapter, the package must be marked “UN3091, Lithium metal batteries packed with equipment,” “UN3481, Lithium ion batteries packed with equipment,” or “UN3552, Sodium ion batteries packed with equipment,” as appropriate. If a package contains a combination of lithium metal batteries, lithium ion batteries, or sodium ion batteries either packed with or contained in equipment, the package must be marked as required for each battery type contained in the package. However, button cell batteries installed in equipment (including circuit boards) need not be considered; and

c. The shipping paper must indicate “UN3091, Lithium metal batteries packed with equipment,” “UN3481, Lithium ion batteries packed with equipment,” or “UN3552, Sodium ion batteries packed with equipment,” as appropriate. If a package contains a

combination of lithium metal batteries, lithium ion batteries, or sodium ion batteries either packed with and contained in equipment, the shipping paper must indicate “UN 3091, Lithium metal batteries packed with equipment,” “UN 3481, Lithium ion batteries packed with equipment,” or “UN3552, Sodium ion batteries packed with equipment,” as appropriate.

* * * * *

234 For Trifluoromethyltetrazole, sodium salt (TFMT-Na) in acetone (UN3555) as a desensitized explosive, plastics drums (1H1) with a maximum capacity of 250 L (66 gallons) are authorized. Packagings must be designed and constructed to prevent loss of the content of the phlegmatizer, transported in an upright position, and be lead free.

* * * * *

252 Ammonium nitrate hot concentrated solutions can be transported under this entry provided:

(a) The solution contains not more than 93% ammonium nitrate;

(b) The solution contains at least 7% water;

(c) The solution contains not more than 0.2% combustible material;

(d) The solution contains no chlorine compounds in quantities such that the chloride ion level exceeds 0.02%;

(e) The pH of an aqueous solution of 10% of the substance is between 5 and 7, measured at 25 °C (77 °F); and

(f) The maximum allowable transport temperature of the solution is 140 °C (284 °F).

In addition, ammonium nitrate hot concentrate solutions are not subject to the requirements of this subchapter provided:

(a) The solution contains not more than 80% ammonium nitrate;

(b) The solution contains not more than 0.2% combustible material;

(c) The ammonium nitrate remains in solution under all conditions of transport; and

(d) The solution does not meet the criteria of any other hazard Class or Division.

* * * * *

328 When lithium metal, lithium ion, or sodium ion batteries are contained in the fuel cell system, the item must be described under this entry and the appropriate entries for “UN3091, Lithium metal batteries contained in equipment,” “UN3481, Lithium ion batteries contained in equipment,” or “UN3552, Sodium ion batteries contained in equipment.”

* * * * *

360 Vehicles powered only by lithium ion batteries, lithium metal

batteries, or sodium ion batteries, must be described using one of the following identification numbers “UN3556, Vehicle, lithium ion battery powered,” “UN3557, Vehicle lithium metal battery powered,” or “UN3558, Vehicle sodium ion battery powered,” as appropriate, to describe the battery technology providing the motive power for the vehicle. Lithium batteries installed in cargo transport units, designed only to provide power external to the transport unit, must be described using “UN 3536. Lithium batteries installed in a cargo transport unit.”

* * * * *

365 For manufactured instruments and articles containing mercury, see UN3506, and for manufactured instruments and articles containing gallium, see UN3554.

* * * * *

371 a. This entry also applies to articles not conforming to the requirements of §§ 173.302, 173.304, or 173.306 of this subchapter, containing a small pressure receptacle with a release device. Such articles must comply with the following requirements:

(1) The water capacity of the pressure receptacle must not exceed 0.5 L and the working pressure must not exceed 25 bar (363 psi) at 15 °C (59 °F);

(2) The minimum burst pressure of the pressure receptacle must be at least four times the pressure of the gas at 15 °C (59 °F);

(3) Each article must be manufactured in such a way that unintentional firing or release is avoided under normal conditions of handling, packing, transport and use. This may be fulfilled by an additional locking device linked to the activator;

(4) Each article must be manufactured in such a way as to prevent hazardous projections of the pressure receptacle or parts of the pressure receptacle;

(5) Each pressure receptacle must be manufactured from material which will not fragment upon rupture;

(6) The design type of the article must be subjected to a fire test. For this test, the provisions of paragraphs 16.6.1.2 except (g), 16.6.1.3.1 to 16.6.1.3.4, 16.6.1.3.6, 16.6.1.3.7(b) and 16.6.1.3.8 of the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter) must be applied. It must be demonstrated that the article relieves its pressure by means of a fire degradable seal or other pressure relief device, in such a way that the pressure receptacle will not fragment and that the article or fragments of the article do not rocket more than 10 meters; and

(7) The design type of the article must be subjected to the following test. A

stimulating mechanism must be used to initiate one article in the middle of the packaging. There must be no hazardous effects outside the package such as disruption of the package, metal fragments or a receptacle which passes through the packaging.

b. The manufacturer must produce technical documentation of the design type, manufacture as well as the tests and their results. The manufacturer must apply procedures to ensure that articles produced in series are made of good quality, conform to the design type and are able to meet the requirements in (a). The manufacturer must provide such information to a representative of the Department upon request.

* * * * *

379 When offered for transport by highway, rail, or cargo vessel, anhydrous ammonia adsorbed or absorbed on a solid contained in ammonia dispensing systems or receptacles intended to form part of such systems is not subject to the requirements of this subchapter if the following conditions in this provision are met. In addition to meeting the conditions in this provision, transport on cargo aircraft only may be authorized with prior approval of the Associate Administrator.

a. The adsorption or absorption presents the following properties:

(1) The pressure at a temperature of 20 °C (68 °F) in the receptacle is less than 0.6 bar (8.7 psi);

(2) The pressure at a temperature of 35 °C (95 °F) in the receptacle is less than 1 bar (14.5);

(3) The pressure at a temperature of 85 °C (185 °F) in the receptacle is less than 12 bar (174 psi).

b. The adsorbent or absorbent material shall not meet the definition or criteria for inclusion in Classes 1 to 8;

c. The maximum contents of a receptacle shall be 10 kg of ammonia; and

d. Receptacles containing adsorbed or absorbed ammonia shall meet the following conditions:

(1) Receptacles shall be made of a material compatible with ammonia as specified in ISO 11114-1:2020(E) (IBR, see § 171.7 of this subchapter);

(2) Receptacles and their means of closure shall be hermetically sealed and able to contain the generated ammonia;

(3) Each receptacle shall be able to withstand the pressure generated at 85 °C (185 °F) with a volumetric expansion no greater than 0.1%;

(4) Each receptacle shall be fitted with a device that allows for gas evacuation once pressure exceeds 15 bar (218 psi) without violent rupture, explosion or projection; and

(5) Each receptacle shall be able to withstand a pressure of 20 bar (290 psi) without leakage when the pressure relief device is deactivated.

e. When offered for transport in an ammonia dispenser, the receptacles shall be connected to the dispenser in such a way that the assembly is guaranteed to have the same strength as a single receptacle.

f. The properties of mechanical strength mentioned in this special provision shall be tested using a prototype of a receptacle or dispenser filled to nominal capacity, by increasing the temperature until the specified pressures are reached.

g. The test results shall be documented, shall be traceable, and shall be made available to a representative of the Department upon request.

* * * * *

389 This entry only applies to lithium ion batteries or lithium metal batteries installed in a cargo transport unit and designed only to provide power external to the cargo transport unit.

a. The lithium batteries must meet the requirements of § 173.185(a) of this subchapter and contain the necessary systems to prevent overcharge and over discharge between the batteries.

b. The batteries must be securely attached to the interior structure of the cargo transport unit (e.g., by means of placement in racks, cabinets, etc.) in such a manner as to prevent short circuits, accidental operation, and significant movement relative to the cargo transport unit under the shocks, loadings, and vibrations normally incident to transport. Hazardous materials necessary for the safe and proper operation of the cargo transport unit (e.g., fire extinguishing systems and air conditioning systems), must be properly secured to or installed in the cargo transport unit and are not otherwise subject to this subchapter.

c. Hazardous materials not necessary for the safe and proper operation of the cargo transport unit must not be transported within the cargo transport unit.

d. The batteries inside the cargo transport unit are not subject to marking or labelling requirements of part 172 subparts D and E of this subchapter.

e. The cargo transport unit shall display the UN number in a manner in accordance with § 172.332 of this subchapter and be placarded on two opposing sides.

f. Emergency response information, as required by subpart G of this part must identify the predominant type of energy

storage battery (i.e., lithium ion or lithium metal battery) contained in the cargo transport unit and provide information on immediate methods for handling fires.

g. For transportation by aircraft, cargo transport units may only be offered for transportation and transported under conditions approved by the Associate Administrator.

* * * * *

400 Except for transportation by aircraft, sodium ion cells and batteries and sodium ion cells and batteries packed with, or contained in, or packed with equipment are not subject to the requirements of this subchapter if they meet the following:

a. The cell or battery is short-circuited in a way that the cell or battery does not contain electrical energy. The short-circuiting of the cell or battery shall be easily verifiable (e.g., busbar between terminals);

b. Each cell or battery meets the provisions in § 173.185 paragraphs (a)(1), (a)(3), (a)(4)(i), and (a)(4)(iii);

c. Each package shall be marked according to § 173.185(c)(3);

d. Except when cells or batteries are installed in equipment, each package shall be capable of withstanding a 1.2 m (3 ft) drop test in any orientation without damage to cells or batteries contained therein, without shifting of the contents so as to allow battery to battery (or cell to cell) contact, and without release of contents;

e. Cells and batteries, when installed in equipment, shall be protected from damage. When batteries are installed in equipment, the equipment shall be packed in strong outer packagings constructed of suitable material of adequate strength and design in relation to the packaging capacity and its intended use unless the battery is afforded equivalent protection by the equipment in which it is contained; and

f. Each cell, including when it is a component of a battery, shall only contain hazardous materials in quantities that are authorized to be transported as limited quantities in accordance with the provisions of part 173 of this subchapter.

401 Sodium ion cells and batteries with organic electrolyte shall be transported as UN3551 or UN3552, as appropriate. Sodium ion cells and batteries with aqueous alkali electrolyte shall be transported as "UN2795, Batteries, wet, filled with alkali, *electric storage*."

402 Hazardous materials transported under this entry shall have a vapor pressure at 70 °C not exceeding 1.1 MPa (159.5 psi) and a density at 50 °C (112 °F) not lower than 0.525 kg/L.

406 Notwithstanding § 173.306 of this subchapter, and except for transportation by air, a hazardous material assigned this entry may be transported as a limited quantity material in DOT specification cylinders and UN pressure receptacles in quantities up to 1.0 L. The packaging must be constructed, qualified, and filled as required by § 173.302 and is limited to a test pressure capacity product not to exceed 152 bar·L (78 psig·ft³). The packagings must be placed in suitable outer packaging. The completed package must not exceed 30 kg (66 lbs) gross weight and may not contain any other hazardous materials. Division 2.2 gases, with no subsidiary hazards, packed in accordance with this special provision are not subject to shipping papers, labeling, or placarding, however, the package must display the limited quantity mark in accordance with § 172.315(a)(1) and (a)(2) of this Part.

* * * * *

408 This entry applies only to aqueous solutions comprised of water, tetramethylammonium hydroxide (TMAH), and no more than 1 percent of other constituents. Other formulations containing TMAH must be assigned to an appropriate generic or n.o.s. entry (e.g., “UN2927, Toxic liquids, corrosive, organic, n.o.s.”, etc.), except as follows:

- a. Other formulations containing a surfactant in a concentration of more than 1 percent and with not less than 8.75 percent tetramethylammonium hydroxide must be assigned to “UN2927, Toxic liquids, corrosive, organic, n.o.s., PG I.”
- b. Other formulations containing a surfactant in a concentration of more than 1 percent and with more than 2.38 percent but less than 8.75 percent TMAH must be assigned to “UN2927, Toxic liquids, corrosive, organic, n.o.s., PG II.”

409 This hazardous material may continue to be classified, described and transported in accordance with the requirements of this subchapter in effect prior to [INSERT EFFECTIVE DATE OF

THE FINAL RULE] until December 31, 2026. Also, hazardous material offered into transportation prior to December 31, 2026, and still in transportation at the expiration of December 31, 2026, may remain in transportation to its destination.

* * * * *

(2) * * *

* * * * *

A54 Irrespective of the quantity limits in Column 9B of the § 172.101 table, a lithium cell or battery or a sodium ion cell or battery, including when a cell or battery is packed with, or contained in, equipment that otherwise meets the applicable requirements of § 173.185, may have a mass exceeding 35 kg (77 lbs) if approved by the Associate Administrator prior to shipment.

* * * * *

A100 Cells and batteries assigned this special provision are subject to state-of-charge limits. Cells and batteries at a state-of-charge greater than authorized limits may only be transported under conditions approved by the Associate Administrator. The requirements are as follows:

a. For UN3480, lithium ion cells and batteries must be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity.

b. Beginning January 1, 2026, for UN3481, lithium ion cells and batteries *packed with equipment* with a Watt-hour (Wh) rating exceeding 2.7 Wh must be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity. Lithium ion cells and batteries not exceeding 2.7 Wh should be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity.

c. Beginning January 1, 2026, for UN3481, lithium ion batteries *contained in equipment*, equipment should be offered for transport with the cells and batteries at a state-of-charge not exceeding 30 percent of their rated capacity or should be offered for transport at an indicated battery capacity not exceeding 25 percent.

d. Beginning January 1, 2026, for UN3551, sodium ion cells and batteries must be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity.

e. For low production runs and prototypes of UN3480, UN3481, UN3551, and UN3552, lithium ion cells and batteries and sodium ion cells and batteries (UN3480 and UN3551), including when packed with or contained in equipment (UN3481 and UN 3552), must be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity.

f. For UN3480, UN3481, UN3551, and UN3552, where the cell or battery has a mass exceeding 35 kg, and approved in accordance with Special Provision A54, lithium ion cells and batteries and sodium ion cells and batteries (UN3480 and UN3551), including when packed with or contained in equipment (UN3481 and UN3552), must be offered for transport at a state-of-charge not exceeding 30 percent of their rated capacity.

g. Beginning January 1, 2026, for UN3556, UN3557, and UN3558, vehicles powered by batteries exceeding 100 Wh must be offered for transport with the battery(ies) at a state-of-charge not exceeding 30 percent of their rated capacity, or an indicated battery capacity not exceeding 25 percent. Vehicles powered by batteries not exceeding 100 Wh should be offered for transport with the battery(ies) at a state-of-charge not exceeding 30 percent of their rated capacity, or an indicated battery capacity not exceeding 25 percent.

Note that guidance and methodology for determining the rated capacity can be found in sub-section 38.3.2.3 of the UN Manual of Tests and Criteria. Cells and batteries shipped at a reduced state-of-charge are less prone to thermal runaway.

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(4) * * *

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TABLE 2 TO PARAGRAPH (c)(4)—IP CODES

IP code	
IP1	IBCs must be packed in closed freight containers or a closed transport vehicle.
IP2	When IBCs other than metal or rigid plastics IBCs are used, they must be offered for transportation in a closed freight container or a closed transport vehicle.
IP3	Flexible IBCs must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.
IP4	Flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.
IP5	IBCs must have a device to allow venting. The inlet to the venting device must be located in the vapor space of the IBC under maximum filling conditions.
IP6	Non-specification bulk bins are authorized.
IP7	For UN identification numbers 1327, 1363, 1364, 1365, 1386, 1408, 1841, 2211, 2217, 2793 and 3314, IBCs are not required to meet the IBC performance tests specified in part 178, subpart N, of this subchapter.

TABLE 2 TO PARAGRAPH (c)(4)—IP CODES—Continued

IP code	
IP8	Ammonia solutions may be transported in IBCs as authorized in IB3, provided that they have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).
IP13	Transportation by vessel in IBCs is prohibited.
IP14	Air must be eliminated from the vapor space by nitrogen or other means.
IP15	For UN2031 with more than 55% nitric acid, the permitted use of rigid plastic IBCs, and the inner receptacle of composite IBCs with rigid plastics, shall be two years from their date of manufacture.
IP16	IBCs of type 31A and 31N are only authorized if approved by the Associate Administrator.
IP19	For UN identification numbers 3531, 3532, 3533, and 3534, IBCs must be designed and constructed to permit the release of gas or vapor to prevent a build-up of pressure that could rupture the IBCs in the event of loss of stabilization.
IP20	Dry sodium cyanide or potassium cyanide is also permitted in sift-proof, water-resistant, fiberboard IBCs when transported in closed freight containers or transport vehicles.
IP21	When transported by vessel, flexible, fiberboard or wooden IBCs must be sift-proof and water-resistant or be fitted with a sift-proof and water-resistant liner.
IP22	UN3550 may be transported in flexible IBCs (13H3 or 13H4) with sift-proof liners to prevent any egress of dust during transport.

* * * * *

(8) “TP” codes.

* * * * *

TP42 Portable tanks are not authorized for the transport of cesium or rubidium dispersions.

* * * * *

■ 8. In § 172.203, revise paragraph (d)(5) to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(d) * * *

(5) For each package in the shipment bearing RADIOACTIVE YELLOW–II or RADIOACTIVE YELLOW–III labels:

(i) The transport index.

(ii) For transport by air, the dimensions of the package including dimensional units, or when placed in an overpack or freight container, the dimensions of the overpack or freight container, as applicable. The length, width (or diameter, as applicable), and height must be indicated. The dimensions should be shown in the following standard order: length then width (or diameter) then height. Dimensions may be indicated by “L,” “W” (or “D”), and “H,” respectively, immediately preceding the respective dimension. However, if a different order is used, the letters “L,” “W” (or “D”), and “H” must be included with the dimensions accordingly.

* * * * *

■ 89. In § 172.315, revise paragraphs (a)(2) and (b)(2) to read as follows:

§ 172.315 Limited quantities.

* * * * *

(a) * * *

(2) The square-on-point must be durable, legible and of a size relative to the packaging, readily visible, and must be applied on at least one side or one end of the outer packaging. The width

of the border forming the square-on-point must be at least 2 mm and the minimum dimension of each side, as measured from the outside of the lines forming the border, must be 100 mm unless the packaging size requires a reduced size marking that must be no less than 50 mm on each side and the width of the border forming the square on point may be reduced to a minimum of 1 mm. Where dimensions are not specified, all features shall be in approximate proportion to those shown. When intended for transportation by vessel, a cargo transport unit (see § 176.2 of this subchapter) containing packages of hazardous materials in only limited quantities must be marked once on each side and once on each end of the exterior of the unit with an identical mark which must have minimum dimensions of 250 mm on each side. For domestic transportation, a packaging marked prior to January 1, 2017, and in conformance with the requirements of this paragraph in effect on December 31, 2014, may continue in service until the end of its useful life.

* * * * *

(b) * * *

(2) The square-on-point must be durable, legible and of a size relative to the package as to be readily visible. The square-on-point must be applied on at least one side or one end of the outer packaging. The width of the border forming the square-on-point must be at least 2 mm and the minimum dimension of each side, as measured from the outside of the lines forming the border, must be 100 mm unless the package size requires a reduced size marking that must be no less than 50 mm on each side and the width of the border forming the square on point may be reduced to a minimum of 1 mm. Where dimensions are not specified, all features shall be in approximate

proportion to those shown. For domestic transportation, a packaging marked prior to January 1, 2017, and in conformance with the requirements of this paragraph in effect on December 31, 2014, may continue in service until the end of its useful life.

* * * * *

§ 172.322 [Amended].

■ 10. In § 172.322, remove and reserve paragraph (e)(3).

■ 11. In § 172.447, revise the section heading, paragraph (a) introductory text and paragraph (b) to read as follows:

§ 172.447 LITHIUM BATTERY or SODIUM ION BATTERY label.

(a) Except for size and color, the LITHIUM BATTERY or SODIUM ION BATTERY label must be as follows:

* * * * *

(b) In addition to complying with § 172.407, the background on the label must be white with seven black vertical stripes on the top half. The black vertical stripes must be spaced, so that, visually, they appear equal in width to the six white spaces between them. The lower half of the label must be white with the symbol (battery group, one broken and emitting flame) and class number “9” underlined and centered at the bottom in black.

* * * * *

PART 173—SHIPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96, and 1.97.

■ 13. Revise § 173.14 to read as follows:

§ 173.14 Hazardous materials in equipment in use or intended for use during transport.

* * * * *

(b) For transportation by aircraft, data loggers and cargo tracking devices with installed lithium cells or batteries, attached to, or placed in packages, overpacks, or unit load devices are not subject to this subchapter provided the following conditions are met:

(1) The data loggers or cargo tracking devices must be in use or intended for use during transport;

(2) Each cell or battery must meet the requirements of § 173.185(a) and applicable requirements of § 172.102, Special Provision 388 of this subchapter;

(3) For a lithium ion cell or battery, the Watt-hour rating may not exceed 20 Wh;

(4) For a lithium metal cell or battery, the lithium content may not exceed 1 g;

(5) The number of data loggers or cargo tracking devices in use or used must be no more than the number required to track or to collect data for the specific consignment;

(6) The data loggers or cargo tracking devices must be capable of withstanding the shocks and loadings normally encountered during transport;

(7) The data loggers or cargo tracking devices must not be capable of generating a dangerous evolution of heat; and

(8) The data loggers or cargo tracking devices must meet defined standards for electromagnetic radiation to ensure that the operation of the device does not interfere with aircraft systems.

(c) Notwithstanding paragraph (b), when transported by air, data loggers and cargo tracking devices with installed lithium cells or batteries, attached to, or placed in packages containing COVID-19 pharmaceuticals, are not subject to the marking and documentation requirements of § 173.185(c)(3) and (c)(4)(iv). This same package, when shipped without the COVID-19 pharmaceuticals for the purpose of use or reuse, is also not subject to the marking and documentation requirements of § 173.185(c)(3) and (c)(4)(iv), as applicable, provided prior arrangements have been made with the operator.

(d) The exceptions provided by this section do not apply to hazardous materials shipped as cargo. Hazardous materials contained in equipment as described in this section, when transported as a cargo, are subject to, and must be transported in accordance with, all applicable requirements of this subchapter.

■ 14. In § 173.59, add the term “pyrotechnic substance” in alphabetical order to read as follows:

§ 173.59 Description of terms for explosives.

* * * * *

Pyrotechnic substance is an explosive substance that is designed to produce an effect by heat, light, sound, gas or smoke or a combination of these as the result of non-detonative self-sustaining exothermic chemical reactions.

* * * * *

■ 15. In § 173.62:

■ a. In Table 1 to Paragraph (b): Explosives Table, add the following entries UN0511, UN0512, UN0513, and UN0514 in alphanumeric order; and

■ b. In Table 2 to paragraph (c)(5): Table of Packing Methods, revise Packing Instruction 131.

The revisions read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)—
EXPLOSIVES TABLES

ID No.	PI
* * * * *	
UN0511	131
UN0512	131
UN0513	131
UN0514	135
* * * * *	

(c) * * *

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
101	This Packing Instruction may be used as an alternative to a specifically assigned packing method with the approval of the Associate Administrator prior to transportation. When this packing instruction is used, the following must be marked on the shipping documents: “Packaging approved by the Competent Authority of the United States of America (USA)”.		
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: 1. Samples of new or existing explosive substances or articles may be transported as directed by the Associate Administrator for purposes including: testing, classification, research and development, quality control, or as a commercial sample. Explosive samples which are wetted or desensitized must be limited to 25 kg. Explosive samples which are not wetted or desensitized must be limited to 10 kg in small packages as specified by the Associate Administrator for Hazardous Materials Safety			
110(a)	Bags, Receptacles <i>Bags:</i> Plastics, Textile, plastic coated or lined Rubber textile, rubberized Textile <i>Receptacles:</i> Wood	Bags, Receptacles <i>Bags:</i> Plastics, Textile, plastic coated or lined Rubber Textile, rubberized <i>Receptacles:</i> Plastics Metal Wood	Drums. Steel (1A1 or 1A2). Other metal (1N1 or 1N2). Plastics (1H1 or 1H2).
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: The intermediate packagings must be filled with water saturated material such as an antifreeze solution or wetted cushioning. Outer packagings must be filled with water saturated material such as an antifreeze solution or wetted cushioning. Outer packagings must be constructed and sealed to prevent evaporation of the wetting solution, except when 0224 is being carried dry.			
110(b)	Bags, Receptacles	Dividing partitions	Boxes.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0074, 0113, 0114, 0129, 0130, 0135 and 0224, the following conditions must be satisfied: a. Inner packagings must not contain more than 50 g of explosive substance (quantity corresponding to dry substance); b. Each inner packaging must be separated from other inner packagings by dividing partitions; and c. The outer packaging must not be partitioned with more than 25 compartments.	<i>Bags:</i> Rubber, conductive Plastics, conductive <i>Receptacles:</i> Metal Wood Rubber, conductive Plastics, conductive	Metal Wood Plastics Fiberboard	Natural wood, sift-proof wall (4C2). Plywood (4D). Reconstituted wood (4F).
111 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0159, inner packagings are not required when metal (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) or plastics (1H1 or 1H2) drums are used as outer packagings.	Bags, Sheets, Receptacles <i>Bags:</i> Paper, waterproofed Plastics Textile, rubberized <i>Sheets:</i> Plastics Textile, rubberized <i>Receptacles:</i> Wood	Not necessary	Boxes, Drums. <i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Natural wood, ordinary (4C1). Natural wood, sift proof (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiberboard (1G). Plastics (1H1 or 1H2). Boxes, Drums.
112(a) PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0004, 0076, 0078, 0154, 0219 and 0394, packagings must be lead free. Intermediate packagings are not required if leakproof drums are used as the outer packaging. For UN0072 and UN0226, intermediate packagings are not required.	Bags, Receptacles <i>Bags:</i> Paper, multiwall Water resistant plastics Textile Textile, rubberized Woven plastics <i>Receptacles:</i> Metal Plastics Wood	Bags, Receptacles <i>Bags:</i> Plastics Textile, plastic coated or lined <i>Receptacles:</i> Metal Plastics Wood	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Natural wood, ordinary (4C1). Natural wood, sift proof (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Bags, Boxes, Drums.
112(b) This packing instruction applies to dry solids other than powders PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state and a maximum net mass of 30 kg. For UN0222, inner packagings are not required.	Bags Paper, kraft, Paper, multiwall, water resistant Plastics Textile Textile, rubberized plastics Woven plastics	Bags For UN0150 only: Plastics Textile, plastic coated or lined	<i>Bags:</i> Woven plastics sift-proof (5H2/3). Plastics, film (5H4). Textile, sift-proof (5L2). Textile, water resistant (5L3). Paper, multiwall, water resistant (5M2). <i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Natural wood, ordinary (4C1). Natural wood, sift proof (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Plywood (1D). Other metal (1N1 or 1N2). Fiber (1G). Plastics (1H1 or 1H2).
112(c)	Bags, Receptacles	Bags, Receptacles	Boxes, Drums.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
This packing instruction applies to solid dry powders PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0004, 0076, 0078, 0154, 0216, 0219 and 0386, packagings must be lead free. For UN0209, bags, sift-proof (5H2) are recommended for flake or prilled TNT in the dry state. Bags must not exceed a maximum net mass of 30 kg. Inner packagings are not required if drums are used as the outer packaging. At least one of the packagings must be sift-proof. For UN 0504, metal packagings must not be used. Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings.	Bags: Paper, multiwall, water resistant Plastics Woven plastics Receptacles: Fiberboard Metal Plastics Wood	Bags: Paper, multiwall, water resistant with inner lining plastics Receptacles: Metal Plastics Wood	Boxes: Steel (4A). Aluminum (4B). Other metal (4N). Natural wood, ordinary (4C1). Natural wood, sift proof (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). Drums: Plastics (1H1 or 1H2). Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Boxes, Drums. Boxes: Steel (4A) Aluminum (4B) Other metal (4N) Natural wood, ordinary (4C1) Natural wood, sift-proof walls (4C2) Plywood (4D) Reconstituted wood (4F) Fiberboard (4G) Plastics, solid (4H2) Drums: Plastics (1H1 or 1H2) Steel (1A1 or 1A2) Aluminum (1B1 or 1B2) Other metal (1N1 or 1N2) Plywood (1D) Fiber (1G) Boxes, Drums.
113 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0094 and UN0305, no more than 50 g of substance must be packed in an inner packaging For UN0027, inner packagings are not necessary when drums are used as the outer packaging. At least one of the packagings must be sift-proof. Sheets must only be used for UN0028.	Bags, Receptacles, Sheets Bags: Paper Plastics Textile, rubberized Receptacles: Fiberboard Metal Plastics Wood Sheets: Paper, kraft Paper, waxed	Not necessary	Boxes, Drums. Boxes: Steel (4A) Aluminum (4B) Other metal (4N) Natural wood, ordinary (4C1) Natural wood, sift-proof walls (4C2) Plywood (4D) Reconstituted wood (4F) Fiberboard (4G) Plastics, solid (4H2) Drums: Plastics (1H1 or 1H2) Steel (1A1 or 1A2) Aluminum (1B1 or 1B2) Other metal (1N1 or 1N2) Plywood (1D) Fiber (1G) Boxes, Drums.
114(a) This packing instruction applies to wetted solids PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0077, 0234, 0235 and 0236, packagings must be lead free. For UN0342, inner packagings are not required when metal (1A1, 1A2, 1B1, 1B2, 1N1 or 1N2) or plastics (1H1 or 1H2) drums are used as outer packagings. Intermediate packagings are not required if leakproof removable head drums are used as the outer packaging.	Bags, Receptacles Bags: Plastics Textile Woven plastics Receptacles: Metal Plastics Wood	Bags, Receptacles, Dividing Partitions Bags: Plastics Textile, plastic coated or lined Receptacles: Metal Plastics Dividing partitions: Wood	Boxes: Steel (4A). Other metal (4N). Natural wood, ordinary (4C1). Natural wood, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). Drums: Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
114(b) PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN Nos. 0077, 0132, 0234, 0235 and 0236, packagings must be leadfree. For UN0160 and UN0161, when metal drums (1A2, 1B2 or 1N2) are used as the outer packaging, metal packagings must be so constructed that the risk of explosion, by reason of increased internal pressure from internal or external causes, is prevented. For UN0160, UN0161, and UN0508, inner packagings are not necessary if drums are used as the outer packaging. For UN0508 and UN0509, metal packagings must not be used Packagings of other material with a small amount of metal, for example metal closures or other metal fittings such as those mentioned in part 178 of this subchapter, are not considered metal packagings.	Bags, Receptacles Bags: Paper, kraft, Plastics Textile, sift-proof Woven plastics, sift-proof Receptacles: Fiberboard Metal Paper Plastics Wood Plastics, sift-proof	Not necessary	Boxes: Natural wood, ordinary (4C1). Natural wood, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Drums: Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
115	Receptacles	Bags, Drums, Receptacles	Boxes, Drums.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For liquid explosives, inner packagings must be surrounded with non-combustible absorbent cushioning material in sufficient quantity to absorb the entire liquid content. Metal receptacles should be cushioned from each other. The net mass of explosive per package may not exceed 30 kg when boxes are used as outer packaging. The net volume of explosive in each package other than boxes must not exceed 120 liters. For UN 0075, 0143, 0495 and 0497 when boxes are used as the outer packaging, inner packagings must have taped screw cap closures and be not more than 5 liters capacity each. A composite packaging consisting of a plastic receptacle in a metal drum (6HA1) may be used in lieu of combination packagings. Liquid substances must not freeze at temperatures above -15°C ($+5^{\circ}\text{F}$). For UN0144, intermediate packagings are not necessary. Aluminum drums (1B1 and 1B2) and metal, other than steel or aluminum, drums (1N1 and 1N2) must not be used. 116 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0082, 0241, 0331 and 0332, inner packagings are not necessary if leakproof removable head drums are used as the outer packaging. For UN 0082, 0241, 0331 and 0332, inner packagings are not required when the explosive is contained in a material impervious to liquid. For UN 0081, inner packagings are not required when contained in rigid plastic that is impervious to nitric esters. For UN 0331, inner packagings are not required when bags (5H2, 5H3 or 5H4) are used as outer packagings. For UN0081, bags must not be used as outer packagings	<i>Receptacles:</i> Metal Plastics Wood Bags, Receptacles, Sheets <i>Bags:</i> Paper, water and oil resistant Plastics Textile, plastic coated or lined Woven plastics, sift-proof <i>Receptacles:</i> Fiberboard, water resistant metal Plastics Wood, sift-proof <i>Sheets:</i> Paper, water resistant Paper, waxed Plastics	<i>Bags:</i> Plastics in metal receptacles <i>Drums:</i> Metal <i>Receptacles:</i> Wood Not necessary Not necessary Not necessary	<i>Boxes:</i> Natural wood, ordinary (4C1). Natural wood, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). <i>Drums:</i> Plastics (1H1 or 1H2). Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Specification MC-200 containers may be used for transport by motor vehicle. Bags, Boxes, Drums, Jerricans. <i>Bags:</i> Woven plastics (5H1/2/3). Paper, multiwall, water resistant (5M2). Plastics, film (5H4). Textile, sift-proof (5L2). Textile, water resistant (5L3). <i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Natural wood, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). <i>Jerricans:</i> Steel (3A1 or 3A2). Plastics (3H1 or 3H2). IBCs. <i>Metal:</i> (11A), (11B), (11N), (21A), (21B), (21N), (31A), (31B), (31N). <i>Flexible:</i> (13H2), (13H3), (13H4), (13L2), (13L3), (13L4), (13M2). <i>Rigid plastics:</i> (11H1), (11H2), (21H1), (21H2), (31H1), (31H2). <i>Composite:</i> (11HZ1), (11HZ2), (21HZ1), (21HZ2), (31HZ1), (31HZ2). Boxes, Drums, Large Packagings.
117 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: This packing instruction may only be used for explosives of UN 0082 when they are mixtures of ammonium nitrate or other inorganic nitrates with other combustible substances that are not explosive ingredients. Such explosives must not contain nitroglycerin, similar liquid organic nitrates, liquid or solid nitrocarbons, or chlorates. This packing instruction may only be used for explosives of UN 0241 that consist of water as an essential ingredient and high proportions of ammonium nitrate or other oxidizers, some or all of which are in solution. The other constituents may include hydrocarbons or aluminum powder, but must not include nitro-derivatives such as trinitrotoluene. Metal IBCs must not be used for UN 0082, UN 0222 and UN 0241. Flexible IBCs may only be used for solids. For UN 0222, when other than metal or rigid plastics IBCs are used, they must be offered for transportation in a closed freight container or a closed transport vehicle. For UN 0222, flexible IBCs must be sift-proof and water-resistant or must be fitted with a sift-proof and water-resistant liner.	Not necessary	Not necessary	
130	Not necessary	Not necessary	Boxes, Drums, Large Packagings.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS 1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459, 0488, 0502 and 0510. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices. 2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.			<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood natural, ordinary (4C1). Wood natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). <i>Large Packagings:</i> Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G). Boxes, Drums.
131 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0029, 0267, and 0455, bags and reels may not be used as inner packagings. For UN 0030, 0255, 0456, 0511, 0512, and 0513, inner packagings are not required when detonators are packed in pasteboard tubes, or when their leg wires are wound on spools with caps either placed inside the spool or securely taped to the wire on the spool, so as to restrict free moving of the caps and to protect them from impact forces. For UN0360, 0361, and 0500, detonators are not required to be attached to the safety fuse, metal-clad mild detonation cord, detonating cord, or shock tube. Inner packagings are not required if the packing configuration restricts free moving of the caps and protects them from impact forces.	Bags, Receptacles, Reels <i>Bags:</i> Paper Plastics <i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Reels.</i>	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Natural wood, sift-proof walls (4C2). Plastics, solid (4H2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes.
132(a) For articles consisting of closed metal, plastic or fiberboard casings that contain detonating explosives, or consisting of plastics-bonded detonating explosives.	Not necessary	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural; ordinary (4C1). Wood, natural, sift proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). Boxes.
132(b) For articles without closed casings	Receptacles, Sheets <i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Sheets:</i> Paper Plastics	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). Boxes.
133	Receptacles, Trays	Intermediate packagings are only needed when trays are used as inner packagings	Boxes.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0043, 0212, 0225, 0268 and 0306 trays are not authorized as inner packagings.	<i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Trays, fitted with dividing partitions:</i> Fiberboard Plastics Wood	<i>Receptacles:</i> Fiberboard Metal Plastics Wood	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). Boxes, Drums.
134	Bags, Receptacles, Sheets, Tubes <i>Bags:</i> Water resistant <i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Sheets:</i> Fiberboard, corrugated <i>Tubes:</i> Fiberboard	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Fiberboard (1G). Plastics (1H1 or 1H2). Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Boxes, Drums.
135	Bags, Receptacles, Sheets	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
None	<i>Bags:</i> Paper Plastics <i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Sheets:</i> Paper Plastics		Boxes, Drums.
136	Bags, Boxes, Dividing partitions	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
None	<i>Bags:</i> Plastics Textile <i>Boxes:</i> Fiberboard Plastics Wood <i>Dividing partitions:</i> In the outer packagings.		Boxes, Drums.
137	Bags, Boxes, Tubes, Dividing partitions	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0059, 0439, 0440 and 0441, when the shaped charges are packed singly, the conical cavity must face downwards and the package marked with orientation markings meeting the requirements of § 172.312(a)(2) of this subchapter. When the shaped charges are packed in pairs, the conical cavities must face inwards to minimize the jetting effect in the event of accidental initiation.	<i>Bags:</i> Plastics <i>Boxes:</i> Fiberboard Wood <i>Tubes:</i> Fiberboard Metal Plastics <i>Dividing partitions:</i> In the outer packagings.		<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). plastics (1H1 or 1H2). Boxes, Drums.
138 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of the articles are sealed, inner packagings are not necessary.	Bags Plastic	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Fiberboard (1G). Plastics, solid (1H1 or 1H2). Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Boxes, Drums.
139 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS 1. For UN0065, 0102, 0104, 0289 and 0290, the ends of the detonating cord must be sealed, for example, by a plug firmly fixed so that the explosive cannot escape. The ends of CORD DETONATING flexible must be fastened securely. 2. For UN0065, 0104, 0289, 0290 the ends of the detonating cord are not required to be sealed provided the inner packaging containing the detonating cord consists of a static-resistant plastic bag of at least 3 mil thickness and the bag is securely closed. 3. For UN0065 and UN0289, inner packagings are not required when they are fastened securely in coils.	Bags, Receptacles, Reels, Sheets <i>Bags:</i> Plastics <i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Reels:</i> <i>Sheets:</i> Paper Plastics	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted Wood (4F). Fiberboard (4G). Plastics, Solid (4H2). <i>Drums:</i> Steel (1A1 Or 1A2). Aluminum (1B1 Or 1B2). Other Metal (1N1 Or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 Or 1H2). Boxes, Drums.
140 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of UN0105 are sealed, no inner packagings are required For UN0101, the packaging must be sift-proof except when the fuse is covered by a paper tube and both ends of the tube are covered with removable caps For UN0101, steel or aluminum boxes or drums must not be used.	Bags, Reels, Sheets, Receptacles <i>Bags.</i> Plastics <i>Reels.</i> <i>Sheets.</i> Paper, kraft Plastics <i>Receptacles.</i> Wood	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
141 PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: If the ends of UN0105 are sealed, no inner packagings are required For UN0101, the packaging must be sift-proof except when the fuse is covered by a paper tube and both ends of the tube are covered with removable caps For UN0101, steel or aluminum boxes or drums must not be used.	Receptacles, Trays, Dividing partitions	Not necessary	<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.

TABLE 2 TO PARAGRAPH (c)(5)—TABLE OF PACKING METHODS—Continued

Packing instruction	Inner packagings	Intermediate packagings	Outer packagings
None	<i>Receptacles:</i> Fiberboard Metal Plastics Wood Trays, fitted with dividing partitions: Plastics Wood <i>Dividing partitions:</i> In the outer packagings.		<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
142	Bags, Receptacles, Sheets, Trays	Not necessary	
None	<i>Bags:</i> Paper Plastics <i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Sheets:</i> Paper Trays, fitted with dividing partitions: Plastics		<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
143	Bags, Receptacles, Trays	Not necessary	
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN 0271, 0272, 0415 and 0491 when metal packagings are used, metal packagings must be so constructed that the risk of explosion, by reason of increase in internal pressure from internal or external causes is prevented. Composite packagings (6HH2) (plastic receptacle with outer solid box) may be used in lieu of combination packagings.	<i>Bags:</i> Paper, kraft Plastics Textile Textile, rubberized <i>Receptacles:</i> Fiberboard Metal Plastics Wood Trays, fitted with dividing partitions: Plastics Wood		<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1). Wood, natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plywood (1D). Fiber (1G). Plastics (1H1 or 1H2). Boxes, Drums.
144	Receptacles, Dividing partitions	Not necessary	
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS: For UN0248 and UN 0249, packagings must be protected against the ingress of water. When CONTRIVANCES, WATER ACTIVATED are transported unpackaged, they must be provided with at least two independent protective features that prevent the ingress of water.	<i>Receptacles:</i> Fiberboard Metal Plastics Wood <i>Dividing partitions:</i> In the outer packagings.		<i>Boxes:</i> Steel (4A). Aluminum (4B). Other metal (4N). Wood, natural, ordinary (4C1) with metal liner. Plywood (4D) with metal liner. Reconstituted wood (4F) with metal liner. Plastics, expanded (4H1). Plastics, solid (4H2). <i>Drums:</i> Steel (1A1 or 1A2). Aluminum (1B1 or 1B2). Other metal (1N1 or 1N2). Plastics (1H1 or 1H2) Plywood (1D).

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1. A jet perforating gun, charged, oil well may be transported under the following conditions:

- a. Initiation devices carried on the same motor vehicle or offshore supply vessel must be segregated; each kind from every other kind, and from any gun, tool or other supplies, unless approved in accordance with § 173.56. Segregated initiation devices must be carried in a container having individual pockets for each such device or in a fully enclosed steel container lined with a non-sparking material. No more than two segregated initiation devices per gun may be carried on the same motor vehicle.
- b. Each shaped charge affixed to the gun may not contain more than 112 g (4 ounces) of explosives.
- c. Each shaped charge if not completely enclosed in glass or metal, must be fully protected by a metal cover after installation in the gun.
- d. A jet perforating gun classed as 1.1D or 1.4D may be transported by highway by private or contract carriers engaged in oil well operations.
 - (i) A motor vehicle transporting a gun must have specially built racks or carrying cases designed and constructed so that the gun is securely held in place during transportation and is not subject to damage by contact, one to the other or any other article or material carried in the vehicle; and
 - (ii) The assembled gun packed on the vehicle may not extend beyond the body of the motor vehicle.
- e. A jet perforating gun classed as 1.4D may be transported by a private offshore supply vessel only when the gun is carried in a motor vehicle as specified in paragraph (d) of this packing method or on offshore well tool pallets provided that:
 - (i) All the conditions specified in paragraphs (a), (b), and (c) of this packing method are met;
 - (ii) The total explosive contents do not exceed 95 kg (209.43 pounds) per tool pallet;
 - (iii) Each cargo vessel compartment may contain up to 95 kg (209.43 pounds) of explosive content if the segregation requirements in § 176.83(b) of this subchapter are met; and
 - (iv) When more than one vehicle or tool pallet is stowed "on deck" a minimum horizontal separation of 3 m (9.8 feet) must be provided.

- 16. In § 173.124, revise paragraph (a)(3)(iii) to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

- (a) * * *
- (3) * * *

(iii) Are any metal powders that can be ignited and react over the whole length of a sample in 10 minutes or less, when tested in accordance with the UN Manual of Tests and Criteria. Metal powders are powders of metal or metal alloys.

* * * * *

- 17. In § 173.125, revise paragraph (b)(1) and (b)(2)(i) to read as follows:

§ 173.125 Class 4—Assignment of packing group.

* * * * *

- (b) * * *

(1) Powdered, granular or pasty materials must be classified in Division 4.1 when the time of burning of one or more of the test runs, in accordance with the UN Manual of Tests and Criteria, is less than 45 seconds or the rate of burning is more than 2.2 mm/s. Metal powders must be classified in Division 4.1 when they can be ignited and the reaction spreads over the whole length of the sample in 10 minutes or less.

- (2) * * *

(i) For readily combustible solids (other than metal powders), Packing Group II if the burning time is less than 45 seconds and the flame passes the wetted zone. Packing Group II must be assigned to metal powders if the zone of reaction spreads over the whole length of the sample in 5 minutes or less.

* * * * *

- 18. In § 173.151, revise paragraph (d) to read as follows:

§ 173.151 Exceptions for Class 4.

* * * * *

(d) *Limited quantities of Division 4.3.* Limited quantities of dangerous when wet solids or liquids (Division 4.3) in Packing Groups II and III are excepted

from labeling requirements, unless the material is offered for transportation or transported by aircraft, and are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also conform to applicable requirements of § 173.27 of this part (*e.g.*, authorized materials, inner packaging quantity limits and closure securement) and only hazardous material authorized aboard passenger-carrying aircraft may be transported as a limited quantity. A limited quantity package that conforms to the provisions of this section is not subject to the shipping paper requirements of subpart C of part 172 of this subchapter, unless the material meets the definition of a hazardous substance, hazardous waste, marine pollutant, or is offered for transportation and transported by aircraft or vessel. In addition, shipments of limited quantities are not subject to subpart F (Placarding) of part 172 of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. Except for transportation by aircraft, the following combination packagings are authorized:

(1) For dangerous when wet solids or liquids in Packing Group II, inner packagings not over 0.5 kg (1.1 pounds) or 500 ml (16.9 fluid ounces) net capacity each, respectively, packed in a strong outer packaging.

(2) For dangerous when wet solids or liquids in Packing Group III, inner packagings not over 1.0 kg (2.2 pounds) or 1 liter (33.8 fluid ounces) net capacity each, respectively, packed in a strong outer packaging.

* * * * *

- 19. In § 173.162, revise the section heading and paragraph (c) to read as follows:

§ 173.162 Gallium (metallic and articles containing gallium).

* * * * *

(c) Manufactured articles or apparatuses. Manufactured articles or apparatuses containing gallium in quantities and form provided in this paragraph are excepted from the requirements of this subchapter, however, when transported by aircraft, such excepted articles and apparatuses must be transported as cargo and may not be carried onboard an aircraft by passengers or crewmembers in carry-on baggage, checked baggage, or on their person unless specifically excepted by § 175.10.

(1) Manufactured articles or apparatuses of which metallic gallium is a component part, such as manometers, pumps, thermometers, switches, are excepted from the specification packaging requirements of paragraph (a) when packaged in strong outer packagings and have sealed inner liners or bags of strong leakproof and puncture-resistant material impervious to gallium, which will prevent the escape of gallium from the package irrespective of its position.

(2) Except for transportation by aircraft manufactured articles or apparatuses containing not more than 1 kg (35.2 ounces) of gallium are not subject to the requirements of this subchapter.

(3) For transportation by aircraft, manufactured articles and apparatuses, except for lamps, each containing a total quantity of not more than 15 g (0.53 ounces) of gallium, are excepted from the requirements of this subchapter if installed as an integral part of a machine or apparatus and so fitted that shock of impact damage, leading to leakage of gallium, is unlikely to occur under conditions normally incident to transport.

(4) Manufactured articles or apparatuses each containing not more than 100 mg (0.0035 ounce) of gallium and packaged so that the quantity of gallium per package does not exceed 1

g (0.035 ounce) are not subject to the requirements of this subchapter. This exception does not apply to lamps when transported by aircraft.

* * * * *

■ 20. In subpart E, add new section § 173.169 to read as follows:

§ 173.169 Fire suppressant dispersing devices.

For the purpose of this section, a fire suppressant dispersing device is an article, containing a pyrotechnic substance, which is intended to disperse a fire extinguishing agent when activated, and does not contain any other hazardous materials.

(a) *Classification.* Articles as described must be examined and successfully tested by a person or agency who is authorized by the Associate Administrator to perform examination and testing of explosives in accordance with § 173.56(b)(1) of this subchapter. The person or agency may not manufacture or market explosives or fire suppressant dispersing devices or may not be owned in whole or in part, or financially dependent upon any entity that manufactures or markets explosives or fire suppressant dispersing devices. The manufacturer must submit to the Associate Administrator a report of the examination and assignment of a recommended shipping description, division, and compatibility group, and if the Associate Administrator finds the approval request meets regulatory criteria, the explosive may be approved in writing and assigned an EX number. The Associate Administrator may also approve a new explosive on the basis of an approval issued for the explosive by the competent authority of a foreign government.

(1) Division 1.4S. For an article to be transported as Division 1.4S fire suppressant dispersing device (UN0514), the article, as packaged for transportation, must meet criteria for Division 1.4S explosive material in accordance with test series 6(c) of the Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter). Articles classed as Division 1.4S not further meeting Class 9 criteria must comply with all applicable requirements for explosives.

(2) Class 9. In addition to meeting criteria for Division 1.4S, an article may be assigned to Class 9 if the following conditions are met:

(i) Three unpackaged articles, each individually activated by its own means of initiation, ignition, or external means to function as designed, meet the following criteria—

(A) No rupture or fragmentation of the external casing of the article, or motion of the article or detached parts of the article of more than one meter in any direction;

(B) No audible report exceeding 135 dB(C) peak at a distance of one meter; and

(C) No flash or flame capable of igniting a material such as a sheet of $80 \pm 10 \text{ g/m}^2$ paper in contact with the article;

(ii) The article, must be packaged in a manner such that when activated, temperatures of the outside surface of the package do not exceed 200°C (392°F); and

(iii) The suppressant contained in the article must be deemed safe for normally occupied spaces in compliance with standards for fixed fire extinguishing systems.

(b) *Authorized Packaging.* (1) General packing requirement. The article, whether Division 1.4S or Class 9, must be transported with either the means of activation removed or equipped with at least two independent means to prevent accidental activation.

(2) Division 1.4S articles. Must be packaged in accordance with § 173.62 of this part.

(3) Class 9 articles. Must be packaged in the following UN specification packagings at the Packing Group III performance level.

(i) 1A2, 1B2, 1N2, 1D, 1G, or 1H2 drums.

(ii) 3A2, 3B2, 3H2 jerricans.

(iii) 4A, 4B, 4N, 4C1, 4C2, 4D, 4F, 4G, 4H1, or 4H2 boxes.

■ 21. Revise § 173.185 to read as follows:

§ 173.185 Lithium cells and batteries and sodium ion cells and batteries.

As used in this section, *consignment* means one or more packages of hazardous materials accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address. *Equipment* means the device or apparatus for which the lithium or sodium ion cells or batteries will provide electrical power for its operation. *Lithium cell(s)* or *battery(ies)* includes both lithium metal and lithium ion chemistries. *Sodium cell(s)* or *battery(ies)* means sodium ion cell(s) or battery(ies) and does not include batteries containing metallic sodium. *Medical device* means an instrument, apparatus, implement, machine, contrivance, implant, or in vitro reagent, including any component, part, or accessory thereof, which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation,

treatment, or prevention of disease, of a person.

(a) *Classification.*

(1) Each lithium or sodium ion cell or battery must be of the type proven to meet the criteria in part III, sub-section 38.3 of the UN Manual of Tests and Criteria (IBR; see § 171.7 of this subchapter). Lithium and sodium ion cells and batteries are subject to these tests regardless of whether the cells used to construct the battery are of a tested type. A single cell battery as defined in part III, sub-section 38.3 of the UN Manual of Tests and Criteria is considered a “cell” and must be offered for transportation in accordance with the requirements for cells.

(i) Cells and batteries manufactured according to a type meeting the requirements of sub-section 38.3 of the UN Manual of Tests and Criteria, Revision 3, Amendment 1 or any subsequent revision and amendment applicable at the date of the type testing may continue to be transported, unless otherwise provided in this subchapter.

(ii) Cell and battery types only meeting the requirements of the UN Manual of Tests and Criteria, Revision 3, are no longer valid. However, cells and batteries manufactured in conformity with such types before July 2003 may continue to be transported if all other applicable requirements are fulfilled.

(2) Each person who manufactures lithium or sodium ion cells or batteries must create a record of satisfactory completion of the testing (e.g., test report) required by this paragraph prior to offering the lithium or sodium cell or battery for transport and must:

(i) Maintain this record for as long as that design is offered for transportation and for one year thereafter; and

(ii) Make this record available to an authorized representative of the Federal, State, or local government upon request.

(3) Each manufacturer and subsequent distributor of lithium cells or batteries or sodium ion cells or batteries manufactured on or after January 1, 2008, must make a test summary available. This requirement does not apply to lithium button cells or sodium ion button cells installed in equipment (including circuit boards). The test summary must include the following elements:

(i) Name of cell, battery, or product manufacturer, as applicable;

(ii) Cell, battery, or product manufacturer's contact information to include address, telephone number, email address, and website for more information;

(iii) Name of the test laboratory, to include address, telephone number,

email address, and website for more information;

(iv) A unique test report identification number;

(v) Date of test report;

(vi) Description of cell or battery to include at a minimum;

(A) Lithium ion, lithium metal, or sodium ion cell or battery;

(B) Mass of cell or battery;

(C) Watt-hour rating or lithium content;

(D) Physical description of the cell or battery; and

(E) Cell or battery model number or, alternatively, if the test summary is established for a product containing a cell or battery, the product model number.

(vii) List of tests conducted and results (*i.e.*, pass/fail);

(viii) Reference to assembled battery testing requirements (if applicable);

(ix) Reference to the revised edition of the UN Manual of Tests and Criteria used and to amendments thereto, if any; and

(x) Name and title of a responsible person as an indication of the validity of information provided.

(4) Except for cells or batteries meeting the requirements of paragraph (c) of this section, each lithium or sodium ion cell or battery must:

(i) Incorporate a safety venting device or be designed to preclude a violent rupture under conditions normally incident to transport;

(ii) Be equipped with means of preventing external short circuits; and

(iii) Be equipped with a means of preventing dangerous reverse current flow (*e.g.*, diodes or fuses) if a battery contains cells, or a series of cells that are connected in parallel.

(5) Beginning May 10, 2024, each lithium ion battery must be marked with the Watt-hour rating on the outside case. Beginning January 1, 2026, each sodium ion battery must be marked with the Watt-hour rating on the outside case.

(b) *Packaging.*

(1) Each package offered for transportation containing lithium or sodium ion cells or batteries, including lithium or sodium ion cells or batteries packed with, or contained in, equipment, must meet all applicable requirements of subpart B of this part.

(2) Lithium or sodium ion cells or batteries, including lithium or sodium ion cells or batteries packed with, or contained in, equipment, must be packaged in a manner to prevent:

(i) Short circuits;

(ii) Damage caused by shifting or placement within the package; and

(iii) Accidental activation of the equipment.

(3) For packages containing lithium or sodium ion cells or batteries offered for transportation:

(i) The lithium or sodium ion cells or batteries must be placed in non-metallic inner packagings that completely enclose the cells or batteries, and separate the cells or batteries from contact with equipment, other devices, or electrically conductive materials (*e.g.*, metal) in the packaging.

(ii) The inner packagings containing lithium or sodium ion cells or batteries must be placed in one of the following packagings meeting the requirements of part 178, subparts L and M, of this subchapter at the Packing Group II level:

(A) Metal (4A, 4B, 4N), wooden (4C1, 4C2, 4D, 4F), fiberboard (4G), or solid plastic (4H1, 4H2) box;

(B) Metal (1A2, 1B2, 1N2), plywood (1D), fiber (1G), or plastic (1H2) drum;

(C) Metal (3A2, 3B2) or plastic (3H2) jerrican.

(iii) When packed with equipment, lithium or sodium ion cells or batteries must:

(A) Be placed in inner packagings that completely enclose the cell or battery, then placed in an outer packaging. The completed package for the cells or batteries must meet the Packing Group II performance requirements as specified in paragraph (b)(3)(ii) of this section; or

(B) Be placed in inner packagings that completely enclose the cell or battery, then placed with equipment in a package that meets the Packing Group II performance requirements as specified in paragraph (b)(3)(ii) of this section.

(C) For transportation by aircraft, the number of cells or batteries in each package is limited to the minimum number required to power the piece of equipment, plus two spare sets. A set of cells or batteries is the number of individual cells or batteries that are required to power each piece of equipment.

(4) When lithium or sodium ion cells or batteries are contained in equipment:

(i) The outer packaging, when used, must be constructed of suitable material of adequate strength and design in relation to the capacity and intended use of the packaging, unless the lithium or sodium ion cells or batteries are afforded equivalent protection by the equipment in which they are contained;

(ii) Equipment must be secured to prevent damage caused by shifting within the outer packaging and be packed so as to prevent accidental operation during transport; and

(iii) Any spare lithium or sodium ion cells or batteries packed with the equipment must be packaged in

accordance with paragraph (b)(3) of this section.

(iv) For transportation by aircraft, where multiple pieces of equipment are packed in the same outer packaging, each piece of equipment must be packed to prevent contact with other equipment.

(5) Lithium or sodium ion batteries that weigh 12 kg (26.5 pounds) or more and have a strong, impact-resistant outer casing may be packed in strong outer packagings; in protective enclosures (for example, in fully enclosed or wooden slatted crates); or on pallets or other handling devices, instead of packages meeting the UN performance packaging requirements in paragraphs (b)(3)(ii) and (iii) of this section. Batteries must be secured to prevent inadvertent shifting, and the terminals may not support the weight of other superimposed elements. Batteries packaged in accordance with this paragraph may be transported by cargo aircraft if approved by the Associate Administrator.

(6) For lithium and sodium ion cells and batteries, except for transportation by aircraft, rigid large packagings are authorized for large cells and large batteries, and equipment containing large cells or large batteries. Large cells are those with a gross mass of more than 500 g (1.1 pounds), and large batteries are those with a gross mass of more than 12 kg (26.5 pounds).

(i) The following rigid large packagings are authorized a single battery and for cells, batteries, and equipment containing cells or batteries, provided they meet the provisions in paragraphs (b)(1) and (2) of this section and the requirements of part 178, subparts P and Q, of this subchapter at the Packing Group II level:

(A) Metal (50A, 50B, 50N) metal packagings must be fitted with an electrically non-conductive lining material (*e.g.*, plastics) of adequate strength for the intended use;

(B) Rigid plastic (50H);

(C) Wooden (50C, 50D, 50F);

(D) Rigid fiberboard (50G).

(ii) Cells, batteries, or equipment must be placed in inner packagings or be separated by other suitable means, such as placement in trays or use of dividers, to ensure protection against damage that may occur under normal conditions of transportation by:

(A) Its shifting or placement within the large packaging;

(B) Contact with other cells, batteries, or equipment within the large packaging; and

(C) Any loads arising from the superimposed weight of cells, batteries, equipment, and packaging components

above the cell, battery, or equipment within the large packaging.

(iii) When multiple cells, batteries, or equipment are packed in the large packaging, bags (e.g., plastics) alone shall not be used to satisfy the requirements in paragraph (b)(6)(ii).

(7) For transportation by aircraft, lithium or sodium ion cells and batteries must not be packed in the same outer packaging with substances and articles of Class 1 (explosives) other than Division 1.4S, Division 2.1 (flammable gases), Class 3 (flammable liquids), Division 4.1 (flammable solids), or Division 5.1 (oxidizers).

(c) *Exceptions for smaller cells or batteries.* Other than as specifically stated below, a package containing lithium or sodium ion cells or batteries, or lithium or sodium ion cells or batteries packed with, or contained in, equipment, that meets the conditions of this paragraph is excepted from the requirements in subparts C through H of part 172 of this subchapter and the UN performance packaging requirements in paragraphs (b)(3)(ii) and (iii) of this section under the following conditions and limitations.

(1) *Size limits.*

(i) The Watt-hour (Wh) rating may not exceed 20 Wh for a lithium ion or sodium ion cell or 100 Wh for a lithium ion or sodium ion battery. Beginning January 1, 2016, each lithium ion battery subject to this provision must be marked with the Wh rating on the outside case. Beginning January 1, 2026, each sodium ion battery subject to this provision must be marked with the Wh rating on the outside case.

(ii) The lithium content may not exceed 1 g for a lithium metal cell or 2 g for a lithium metal battery.

(iii) Except for lithium or sodium ion cells or batteries packed with or contained in equipment in quantities not exceeding 5 kg net weight, the outer package must be appropriately marked: “PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT”; “LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT

ABOARD PASSENGER AIRCRAFT”; “LITHIUM ION BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT”; “LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT”; or “SODIUM ION BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT”, or labeled with a “CARGO AIRCRAFT ONLY” label as specified in § 172.448 of this subchapter.

(iv) For transportation by highway or rail only, the lithium content of a lithium metal cell and battery may be increased to 5 g and 25 g, respectively, and the Wh rating for a lithium ion or sodium ion cell and battery may be increased to 60 Wh and 300 Wh, respectively, provided the outer package is marked: “LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD AIRCRAFT AND VESSEL” or “SODIUM ION BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD AIRCRAFT AND VESSEL.” A package marked in accordance with this paragraph does not need to display the marking required in paragraph (c)(1)(iii) of this section.

(v) The marking specified in paragraphs (c)(1)(iii) and (iv) of this section must have a background of contrasting color, and the letters in the marking must be:

(A) At least 6 mm (0.25 inch) in height on packages having a gross weight of 30 kg (66 pounds) or less, except that smaller font may be used as necessary when package dimensions so require.

(B) At least 12 mm (0.5 inch) in height on packages having a gross weight of more than 30 kg (66 pounds).

(vi) When a package marked or labeled in accordance with paragraph (c)(1)(iii) or (iv) of this section is placed in an overpack, the selected marking or label must either be clearly visible through the overpack, or the marking or label must also be affixed on the outside of the overpack.

(vii) Except when lithium or sodium ion cells or batteries are packed with, or contained in, equipment, each package

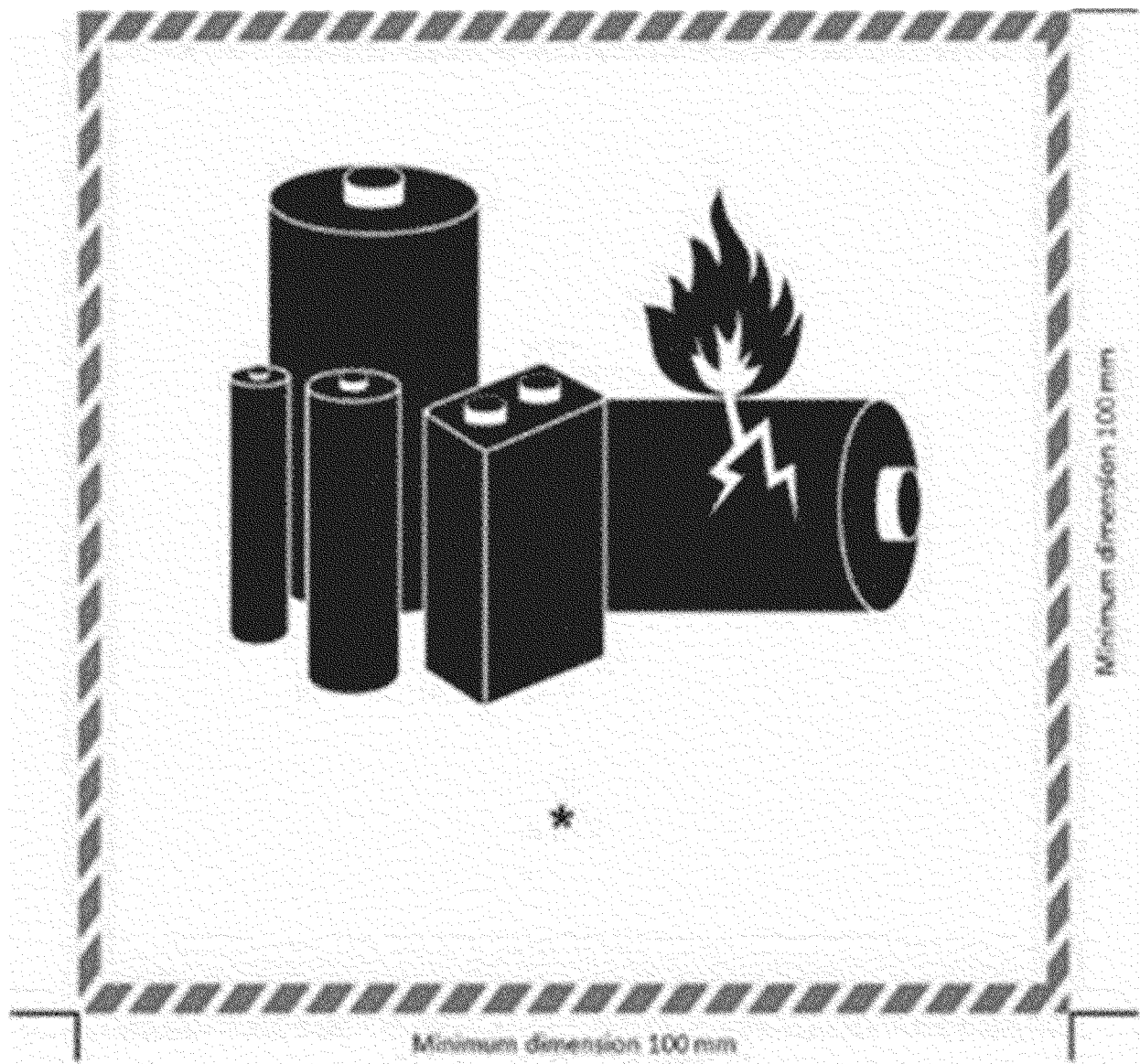
must not exceed 30 kg (66 pounds) gross weight.

(2) *Packaging.* Lithium or sodium ion cells and batteries must be packed in inner packagings that completely enclose the cell or battery then placed in a strong rigid outer package unless the cell or battery is contained in equipment and is afforded equivalent protection by the equipment in which it is contained. Except when lithium or sodium ion cells or batteries are contained in equipment, each package of lithium or sodium ion cells or batteries, or the completed package when packed with equipment, must be capable of withstanding a 1.2 meter drop test, in any orientation, without damage to the cells or batteries contained in the package, without shifting of the contents that would allow battery-to-battery (or cell-to-cell) contact, and without release of the contents of the package.

(3) *Battery mark.* Each package must display the battery mark except when a package contains only button cell batteries installed in equipment (including circuit boards), or when a consignment of no more than two packages each package contains not more than four lithium cells or sodium ion cells, or two lithium or sodium ion batteries contained in equipment.

(i) The mark must indicate the UN number: “UN3090” for lithium metal cells or batteries; “UN3480” for lithium ion cells or batteries; or “UN3551” for sodium ion cells or batteries. If the lithium or sodium ion cells or batteries are contained in, or packed with, equipment, the UN number “UN3091,” “UN3481,” or “UN3552,” as appropriate, must be indicated. If a package contains a combination of lithium or sodium ion cells or batteries assigned to different UN numbers, all applicable UN numbers must be indicated on one or more marks. The package must be of such size that there is adequate space to affix the mark on one side without the mark being folded.

**Figure 1 to Paragraph (c)(3)(i)
Introductory Text**



(A) The mark must be in the form of a rectangle or a square with hatched edging. The mark must be not less than 100 mm (3.9 inches) wide by 100 mm (3.9 inches) high and the minimum width of the hatching must be 5 mm (0.2 inches), except marks of 100 mm (3.9 inches) wide by 70 mm (2.8 inches) high may be used when the package is too small for the larger mark;

(B) The symbols and letters must be black on white or suitable contrasting background and the hatching must be red;

(C) The “*” must be replaced by the appropriate UN number(s); and

(D) Where dimensions are not specified, all features shall be in approximate proportion to those shown.

(ii) The battery mark, in conformance with the requirements of this paragraph, in effect on May 9, 2024, may continue to be used until December 31, 2026.

(iii) For packages placed in an overpack, the battery mark shall either be clearly visible through the overpack or be reproduced on the outside of the overpack and the overpack shall be marked with the word “OVERPACK.” The lettering of the “OVERPACK” mark shall be at least 12 mm (0.47 inches) high.

(4) *Air transportation for smaller lithium or sodium ion cells or batteries packed with, or contained in, equipment.*

(i) The number of cells or batteries in each package is limited to the minimum number required to power the piece of equipment, plus two spare sets, and the total net quantity (mass) of the lithium or sodium ion cells or batteries in the completed package must not exceed 5 kg (11 pounds). A set of cells or batteries is the number of individual cells or

batteries that are required to power each piece of equipment.

(ii) For packages placed in an overpack, the packages must be secured within the overpack, and the intended function of each package must not be impaired by the overpack.

(iii) Each shipment with packages required to display the paragraph (c)(3)(i) battery mark must include on the air waybill an indication of compliance with this paragraph (c)(4) (or the applicable ICAO Technical Instructions Packing Instruction), when an air waybill is used.

(iv) Each person who prepares a package for transport containing lithium or sodium ion cells or batteries, packed with, or contained in, equipment in accordance with the conditions and limitations of this paragraph (c)(4), must receive instruction on these conditions

and limitations, corresponding to their functions.

(v) Each package must be capable of withstanding, without damage to the cells or batteries contained therein and without any reduction of effectiveness, a force applied to the top surface equivalent to the total weight of identical packages stacked to a height of 3 m (9.8 ft) (including the test sample) for a duration of 24 hours.

(5) *Air transportation for smaller lithium or sodium ion cells and batteries.*

(i) A package prepared in accordance with the size limits in paragraph (c)(1) is subject to all applicable requirements of this subchapter, except that a package containing not more than 2.5 kg (5.5 pounds) lithium metal cells or batteries, or 10 kg (22 pounds) lithium ion or sodium ion cells or batteries, is not subject to the UN performance packaging requirements in paragraph (b)(3)(ii) of this section, when the package displays both the battery mark in paragraph (c)(3)(i) and the Class 9 Lithium or Sodium Battery label specified in § 172.447 of this subchapter. This paragraph does not apply to cells or batteries packed with, or contained in, equipment.

(ii) Each package must be capable of withstanding, without damage to the cells or batteries contained therein and without any reduction of effectiveness, a force applied to the top surface equivalent to the total weight of identical packages stacked to a height of 3 m (9.8 ft) (including the test sample) for a duration of 24 hours.

(d) *Lithium or sodium ion cells or batteries shipped for disposal or recycling.* A lithium or sodium ion cell or battery, including a lithium or sodium ion cell or battery contained in equipment, that is transported by motor vehicle to a permitted storage facility or disposal site, or for purposes of recycling, is excepted—

(1) From the testing and record keeping requirements of paragraph (a) and the UN performance packaging requirements in paragraphs (b)(3)(ii), (b)(3)(iii) and (b)(6) of this section, when packed in a strong outer packaging conforming to the applicable requirements of subpart B of this part; and

(2) From subparts C through H of part 172 of this subchapter when the lithium or sodium ion cell or battery meets the size, packaging, and hazard communication conditions in paragraph (c)(1)–(3) of this section.

(e) *Low production runs and prototypes.* Low production runs (*i.e.*, annual production runs consisting of not more than 100 lithium or sodium

cells or batteries), prototype lithium or sodium ion cells or batteries transported for purposes of testing, and equipment containing such cells or batteries are excepted from the testing and recordkeeping requirements of paragraph (a) of this section, provided:

(1) Except as provided in paragraph (e)(5) of this section, each cell or battery is individually packed in a non-metallic inner packaging, inside an outer packaging, and is surrounded by cushioning material that is non-combustible and electrically non-conductive, or contained in equipment. Equipment must be constructed or packaged in a manner as to prevent accidental operation during transport;

(2) Appropriate measures shall be taken to minimize the effects of vibration and shocks and prevent shifting of the cells or batteries within the package that may lead to damage and a dangerous condition during transport. Cushioning material that is non-combustible and electrically non-conductive may be used to meet this requirement;

(3) The lithium or sodium ion cells or batteries are packed in inner packagings or contained in equipment. The inner packaging or equipment is placed in one of the following outer packagings that meet the requirements of part 178, subparts L and M, of this subchapter at the Packing Group I level. Cells and batteries, including equipment of different sizes, shapes or masses must be placed into an outer packaging of a tested design type listed in this section provided the total gross mass of the package does not exceed the gross mass for which the design type has been tested. A cell or battery with a net mass of more than 30 kg (66 pounds) is limited to one cell or battery per outer packaging;

(i) Metal (4A, 4B, 4N), wooden (4C1, 4C2, 4D, 4F), or solid plastic (4H2) box;

(ii) Metal (1A2, 1B2, 1N2), plywood (1D), or plastic (1H2) drum;

(4) For a single battery, and for a single item of equipment containing cells or batteries, the following rigid large packagings are authorized:

(i) Metal (50A, 50B, 50N) metal packagings must be fitted with an electrically non-conductive lining material (*e.g.*, plastics) of adequate strength for the intended use;

(ii) Rigid plastic (50H);

(iii) Plywood (50D);

(5) Lithium or sodium ion batteries, including lithium or sodium ion batteries contained in equipment, that weigh 12 kg (26.5 pounds) or more and have a strong, impact-resistant outer casing may be packed in strong outer packagings, in protective enclosures (for

example, in fully enclosed or wooden slatted crates), or on pallets or other handling devices, instead of packages meeting the UN performance packaging requirements in paragraphs (b)(3)(ii) and (iii) of this section. The battery must be secured to prevent inadvertent shifting, and the terminals may not support the weight of other superimposed elements;

(6) Notwithstanding the quantity limit specified in column (9B) of the § 172.101 Hazardous Materials Table, the cell or battery prepared for transport in accordance with this paragraph may have a mass exceeding 35 kg gross weight when transported by cargo-only aircraft;

(7) Cells or batteries packaged in accordance with this paragraph are not permitted for transportation by passenger-carrying aircraft, and may be transported by cargo-only aircraft if approved by the Associate Administrator prior to transportation; and

(8) Shipping papers must include the following notation: “Transport in accordance with (e).”

(f) *Damaged, defective, or recalled cells or batteries.* Lithium or sodium ion cells or batteries that have been damaged or identified by the manufacturer as being defective for safety reasons, that have the potential of producing a dangerous evolution of heat, fire, or short circuit (*e.g.*, those being returned to the manufacturer for safety reasons) may be transported by highway, rail, or vessel only, and must be packaged as follows:

(1) Each cell or battery must be placed in individual, non-metallic inner packaging that completely encloses the cell or battery;

(2) The inner packaging must be surrounded by cushioning material that is non-combustible, electrically non-conductive, and absorbent; and

(3) Each inner packaging must be individually placed in one of the following packagings meeting the applicable requirements of part 178, subparts L, M, P, and Q of this subchapter at the Packing Group I level:

(i) Metal (4A, 4B, 4N), wooden (4C1, 4C2, 4D, 4F), or solid plastic (4H2) box;

(ii) Metal (1A2, 1B2, 1N2), plywood (1D), or plastic (1H2) drum; or

(iii) For a single battery, and for a single item of equipment containing cells or batteries, the following rigid large packagings are authorized:

(A) Metal (50A, 50B, 50N);

(B) Rigid plastic (50H);

(C) Plywood (50D); and

(4) The outer package must be marked with an indication that the package contains a “Damaged/defective lithium ion battery,” “Damaged/defective

lithium metal battery,” or “Damaged/defective sodium ion battery,” as appropriate. The marking required by this paragraph must be in characters at least 12 mm (0.47 inches) high.

(g) *Limited exceptions to restrictions on air transportation of medical device batteries.* Notwithstanding the quantity limits specified in Column (9A) of the § 172.101 Hazardous Materials Table of this subchapter, up to two replacement lithium or sodium ion cells or batteries specifically used for a medical device as defined in this section may be transported as cargo on a passenger aircraft. Packages containing these cells or batteries are not subject to the marking requirement in paragraph (c)(1)(iii) of this section or the “CARGO AIRCRAFT ONLY” label required by § 172.402(c) of this subchapter and may be transported as cargo on a passenger aircraft when approved by the Associate Administrator and provided the following conditions are met:

(1) The intended destination of the cells or batteries is not serviced daily by cargo aircraft if a cell or battery is required for medically necessary care; and

(2) Lithium ion or sodium ion cells or batteries for medical devices are excepted from the state-of-charge limitations in § 172.102, Special Provision A100, of this subchapter, provided each cell or battery is:

(i) Individually packed in an inner packaging that completely encloses the cell or battery;

(ii) Placed in a rigid outer packaging; and

(iii) Protected to prevent short circuits.

(h) *Approval.* A lithium or sodium ion cell or battery that does not conform to the provisions of this subchapter may be transported only under conditions approved by the Associate Administrator.

■ 23. In § 173.219, revise paragraph (b)(3) to read as follows:

§ 173.219 Life-saving appliances.

* * * * *

(b) * * *

(3) Electric storage batteries (Class 8) and lithium and sodium ion batteries (Class 9). Life-saving appliances

containing lithium and sodium ion batteries must be packed in accordance with § 173.185 and Special Provisions A54 and A101, as applicable;

* * * * *

■ 24. In § 173.220, revise paragraph (d) to read as follows:

§ 173.220 Internal combustion engines, vehicles, machinery containing internal combustion engines, battery-powered equipment or machinery, fuel cell-powered equipment or machinery.

* * * * *

(d) *Vehicles, Engines, and Machinery Powered by Lithium ion, Lithium Metal and Sodium ion Batteries are subject to the following:*

(1) Except as provided in § 172.102, Special Provision A101, of this subchapter, vehicles, engines, and machinery powered by lithium metal batteries, that are transported with these batteries installed, are forbidden aboard passenger-carrying aircraft.

(2) Lithium and sodium ion batteries contained in vehicles, engines, or mechanical equipment must be securely fastened in the battery holder of the vehicle, engine, or mechanical equipment, and be protected in such a manner as to prevent damage and short circuits (e.g., by using non-conductive caps that cover the terminals entirely).

(3) Except for vehicles, engines, or machinery transported by highway, rail, or vessel with prototype or low production lithium or sodium ion batteries securely installed, each lithium or sodium ion battery must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter), as specified in § 173.185, unless approved by the Associate Administrator.

(4) Where a vehicle could possibly be handled in other than an upright position, the vehicle must be secured in a strong, rigid outer packaging. The vehicle must be secured by means capable of restraining the vehicle in the outer packaging to prevent any shifting during transport which would change the orientation or cause the vehicle to be damaged.

(5) Where the lithium or sodium ion battery is removed from the vehicle and is packed separate from the vehicle in

the same outer packaging, the package must be consigned as “UN3481, Lithium ion batteries packed with equipment;” “UN3091, Lithium metal batteries packed with equipment;” or “UN3552, Sodium ion batteries packed with equipment” and prepared in accordance with the requirements specified in § 173.185.

(6) Notwithstanding other requirements of this section, vehicles powered by sodium ion batteries, containing no other hazardous materials, are not subject to this subchapter if the battery is short-circuited in a way that the battery does not contain electrical energy. The short-circuiting of the battery must be easily verifiable (such as busbar between terminals).

* * * * *

■ 25. In § 173.225:

■ a. In Table 1 to Paragraph (c): Organic Peroxide Table, remove the entry for “UN3106, Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil], ≤52.”

■ b. In Table 1 to Paragraph (c): Organic Peroxide Table, add the following entries in alphabetical order by technical name: “UN3109, Dibenzoyl peroxide,” “UN3104, Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil],” “Exempt, 2,5-Dimethyl-2,5-di-(tert-butylperoxy) hexane,” and “UN3105, Methyl ethyl ketone peroxide(s).”

■ c. In Table 1 to Paragraph (c): Organic Peroxide Table, add new Note 33 after the table.

■ d. In Table 3 to Paragraph (e): Organic Peroxide IBC Table, remove the entry for “UN3119, Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52%, stable dispersion, in water.”

■ e. In Table 3 to Paragraph (e): Organic Peroxide IBC Table, add new entry for “UN3119, Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52%, stable dispersion, in water.”

The revisions read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(c) * * *

(8) * * *

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)

[REMOVE].

TABLE 1 TO PARAGRAPH (c)—ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Con- centration (mass %)	Diluent (mass %)			Water (mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emer- gency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3106	 ≤52 .....	.....	.....	.....	.....	OP7	.....	.....	*
*	*	*		*		*		*		*
	[ADD].									
Dibenzoyl peroxide	UN3109	 ≤42	≥38	.....	.....	≥13	OP8	.....	.....	*
*	*	*		*		*		*		*
Di-2,4-dichlorobenzoyl peroxide [as a paste with silicone oil].	UN3104	 ≤52 .....	.....	.....	.....	.....	OP5	.....	.....	*
2,5-Dimethyl-2,5-di-(tert- butylperoxy) hexane.	Exempt	 ≤22 .....	.....	.....	≥78	.....	.....	.....	.....	29
*	*	*		*		*		*		*
Methyl ethyl ketone peroxide(s)	UN3105	 Available oxygen ≤9%.	≥41	.....	.....	≥9	OP7	.....	.....	5, 33
*	*	*		*		*		*		*
Notes:										
*	*	*	*	*	*	*	*	*	*	*

■ 33. Sum of diluents type A and water being ≥ 55%, and in addition to methyl ethyl ketone.

* * * * *

(e) * * *

TABLE 3 TO PARAGRAPH (e)—ORGANIC PEROXIDE IBC TABLE

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
[REMOVE].					
UN3119	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52%, stable dispersion, in water.	31A	1250	+10 °C	+15 °C
*	*	*	*	*	*
[ADD].					
UN3119	Di-(3,5,5-trimethylhexanoyl) peroxide, not more than 52%, stable dispersion, in water.	31HA1	1000	+10 °C	+15 °C
		31A	1250	+10 °C	+15 °C
*	*	*	*	*	*

* * * * *

■ 26. In 173.232, revise paragraph (b) to read as follows:

§ 173.232 Articles containing hazardous materials, n.o.s.

* * * * *

(b) Such articles may contain batteries. Lithium batteries or sodium ion batteries that are integral to the article must be of a type proven to meet

the testing requirements of the UN Manual of Tests and Criteria, part III, subsection 38.3 (IBR, see § 171.7 of this subchapter), except as specified in 173.185(e) or when otherwise specified by this subchapter.

* * * * *

■ 27. In § 173.301b, revise paragraph (a)(2) to read as follows:

§ 173.301b Additional general requirements for shipment of UN pressure receptacles.

(a) * * *

(2) The gases or gas mixtures must be compatible with the UN pressure receptacle and valve materials as prescribed for metallic materials in ISO 11114–1:2020(E) (IBR, see § 171.7 of this subchapter) and for non-metallic

materials in ISO 11114–2:2021(E) (IBR, *see* § 171.7 of this subchapter).

* * * * *

■ 28. In § 173.304b, add new paragraph (e) to read as follows:

§ 173.304b Additional requirements for shipment of liquefied compressed gases in UN pressure receptacles.

* * * * *

(e) Disilane, UN3553 is not authorized in MEGCs.

PART 175—CARRIAGE BY AIRCRAFT

■ 29. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81 and 1.97.

■ 30. In § 175.1, revise paragraph (e) to read as follows:

§ 175.1 Purpose, scope, and applicability.

* * * * *

(e) In addition to the requirements of this part, air carriers that are certificate

holders authorized to conduct operations in accordance with 14 CFR parts 121 and 135 are also required to have a Safety Management System that meets the requirements and conditions of 14 CFR part 5 and is acceptable to the Federal Aviation Administration (FAA) Administrator.

PART 176—CARRIAGE BY VESSEL

■ 31. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 32. In § 176.83, revise paragraph (a)(8) to read as follows:

§ 176.83 Segregation.

(a) * * *

(8) Notwithstanding the requirements of paragraphs (a)(6) and (a)(7) of this section, hazardous materials of the same class may be stowed together without regard to segregation required by

secondary hazards (subsidiary risk label(s)), provided the hazardous materials do not react dangerously with each other and do not cause:

(i) Combustion or evolution of considerable heat;

(ii) Evolution of flammable, toxic or asphyxiant gases;

(iii) The formation of corrosive substances; or

(iv) The formation of unstable substances.

* * * * *

■ 34. In § 176.84, in paragraph (b), Table of Provisions:

■ a. Revise codes 116 and 156; and

■ b. Add codes 158, 159 and 160 in numerical order; The revisions read as follows:

§ 176.84 Other requirements for stowage, cargo handling, and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
116	In a cargo space capable of being opened up in an emergency. The possible need to open hatches in case of fire to provide maximum ventilation and to apply water in an emergency and the consequent risk to the stability of the ship through flooding of the cargo space should be considered before loading. The requirement for opening the cargo space hatches applies to the weather deck and tween deck hatches (if any).
156	For lithium or sodium ion batteries transported in accordance with § 173.185(f) or for purposes of disposal or recycling, stowage category C applies.
158	Cargo transport units shall be shaded from direct sunlight. Packages in cargo transport units shall be stowed to allow for adequate air circulation throughout the cargo.
159	During transport, it should be stowed (or kept) in a cool ventilated place.
160	Must be stowed away from potential sources of ignition.

* * * * *

■ 35. In § 176.905, revise paragraph (i)(1)(ii) to read as follows:

§ 176.905 Stowage of vehicles.

* * * * *

(i) * * *

(1) * * *

(ii) For vehicles powered solely by sodium ion batteries and hybrid electric vehicles powered by both an internal combustion engine and sodium ion batteries offered in accordance with this paragraph, the sodium ion batteries, except for prototype or those produced in low production, must be of a type that has successfully passed each test in the UN Manual of Tests and Criteria, as specified in § 173.185(a) of this subchapter and the batteries are short-circuited in a way that the battery does not contain electrical energy. The short

circuiting shall be easily identifiable (*e.g.*, busbar between terminals). Where a sodium ion battery installed in a vehicle is damaged or defective, the battery must be removed.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 36. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 37. In § 178.71, revise paragraphs (d)(2), (g)(4), (l)(1), and (o) to read as follows:

§ 178.71 Specifications for UN pressure receptacles.

* * * * *

(d) * * *

(2) Service equipment must be configured, or designed, to prevent damage that could result in the release of the pressure receptacle contents during normal conditions of handling and transport. Manifold piping leading to shut-off valves must be sufficiently flexible to protect the valves and the piping from shearing or releasing the pressure receptacle contents. The filling and discharge valves and any protective caps must be secured against unintended opening. The valves must conform to ISO 10297:2014(E) and ISO 10297:2014/Amd 1:2017(E) (IBR, *see* § 171.7 of this subchapter), or, specifically for ball valves, must conform to ISO 23826:2021 (IBR, *see* § 171.7 of this subchapter), or for non-refillable pressure receptacles valves manufactured until December 31, 2020 ISO 13340:2001(E), and be protected as

specified in § 173.301b(f) of this subchapter. Until December 31, 2022, the manufacture of a valve conforming to the requirements of ISO 10297:2014(E) was authorized. Until December 31, 2020, the manufacture of a valve conforming to the requirements in ISO 10297:2006(E) (IBR, *see* § 171.7 of this subchapter) was authorized. Until December 31, 2008, the manufacture of a valve conforming to the requirements in ISO 10297:1999(E) (IBR, *see* § 171.7 of this subchapter) was authorized. In addition, valves must be initially inspected and tested in accordance with ISO 14246:2014(E) and ISO 14246:2014/Amd 1:2017(E), (IBR, *see* § 171.7 of this subchapter). For self-closing valves with inherent protection, the requirements of ISO 17879:2017(E) (IBR, *see* § 171.7 of this subchapter) shall be met until further notice.

* * * * *

(g) * * *

(4) ISO 9809–4:2021(E), Gas cylinders—Design, construction and testing of refillable seamless steel gas cylinders and tubes—Part 4: Stainless steel cylinders with an Rm value of less than 1 100 MPa (IBR, *see* § 171.7 of this subchapter), or until December 31, 2028, ISO 9809–4:2014(E), Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1,100 MPa (IBR, *see* § 171.7 of this subchapter).

* * * * *

(1) * * *

(1) In addition to the general requirements of this section, UN composite cylinders and tubes must be designed for a design life of not less than 15 years. Composite cylinders and tubes with a design life longer than 15 years must not be filled after 15 years from the date of manufacture, unless the design has successfully passed a service life test program. The service life test program must be part of the initial design type approval and must specify inspections and tests to demonstrate that cylinders manufactured accordingly remain safe to the end of their design life. The service life test program and the results must be approved by the competent authority of the country of approval that is responsible for the initial approval of the cylinder design. The service life of a composite cylinder or tube must not be extended beyond its initial approved design life. In addition, composite cylinders and tubes must conform to the following ISO standards, as applicable:

(i) ISO 11119–1:2020(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders may be

designed and constructed to ISO 11119–1:2012(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–1(E).

(ii) ISO 11119–2:2020(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders may be designed and constructed to ISO 11119–2:2012/Amd.1:2014(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–2(E) (IBR, *see* § 171.7 of this subchapter) are authorized.

(iii) ISO 11119–3:2020(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders be design and constructed to ISO 11119–3:2013(E) (IBR, *see* § 171.7 of this subchapter). Until December 31, 2020, cylinders conforming to the requirements in ISO 11119–3(E) (IBR, *see* § 171.7 of this subchapter) are authorized.

(iv) ISO 11119–4:2016(E) (IBR, *see* § 171.7 of this subchapter).

* * * * *

(o) *Material compatibility.* In addition to the material requirements specified in the UN pressure receptacle design and construction ISO standards, and any restrictions specified in part 173 for the gases to be transported, the requirements of the following standards must be applied with respect to material compatibility:

(1) ISO 11114–1:2020(E) (IBR, *see* § 171.7 of this subchapter).

(2) ISO 11114–2:2021(E) (IBR, *see* § 171.7 of this subchapter).

* * * * *

■ 38. In § 178.75, revise paragraph (d)(3)(iv), (vi), (vii), and (viii) to read as follows:

§ 178.75 Specifications for MEGCs.

* * * * *

(d) * * *

(3) * * *

(iv) ISO 9809–4:2021(E) Gas cylinders—Refillable seamless steel gas cylinders—Design, construction, and testing—Part 4: Stainless steel cylinders with an Rm value of less than 1100 MPa (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders may be designed and constructed to ISO 9809–4:2014 (IBR, *see* § 171.7 of this subchapter).

* * * * *

(vi) ISO 11119–1:2020(E), Gas cylinders—Refillable composite gas cylinders and tubes—Design, construction, and testing—Part 1: Hoop wrapped fibre reinforced composite gas cylinders and tubes up to 450 l (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders may be

designed and constructed to ISO 11119–1:2012 (IBR, *see* § 171.7 of this subchapter).

(vii) ISO 11119–2:2020(E), Gas cylinders—Design, construction, and testing of refillable composite gas cylinders and tubes—Part 2: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with load-sharing metal liners (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders may be designed and constructed to ISO 11119–2:2012/Amd.1:2014 (IBR, *see* § 171.7 of this subchapter).

(viii) ISO 11119–3:2020(E), Gas cylinders—Design, construction, and testing of refillable composite gas cylinders and tubes—Part 3: Fully wrapped fibre reinforced composite gas cylinders and tubes up to 450 l with non-load-sharing metallic or non-metallic liners or without liners (IBR, *see* § 171.7 of this subchapter). Until December 31, 2028, cylinders may be designed and constructed to ISO 11119–3:2012 (IBR, *see* § 171.7 of this subchapter).

* * * * *

■ 39. In § 178.504, revise paragraph (b)(4) to read as follows:

§ 178.504 Standards for steel drums.

* * * * *

(b) * * *

(4) The body of a drum may have rolling hoops, either expanded or separate. If there are separate rolling hoops, they must be fitted tightly on the body and so secured that they cannot shift. Rolling hoops may not be spot-welded.

* * * * *

■ 40. In § 178.505, revise paragraph (b)(3) to read as follows:

§ 178.505 Standards for aluminum drums.

* * * * *

(b) * * *

(3) The body of a drum may have rolling hoops, either expanded or separate. If there are separate rolling hoops, they must be fitted tightly on the body and so secured that they cannot shift. Rolling hoops may not be spot-welded.

* * * * *

■ 41. In § 178.506, revise paragraph (b)(3) to read as follows:

§ 178.506 Standards for metal drums other than steel or aluminum.

* * * * *

(b) * * *

(3) The body of a drum may have rolling hoops, either expanded or separate. If there are separate rolling hoops, they must be fitted tightly on the body and so secured that they cannot

shift. Rolling hoops may not be spot-welded.

* * * * *

**PART 180—CONTINUING
QUALIFICATION AND MAINTENANCE
OF PACKAGINGS**

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 43. In § 180.207, revise paragraph (d)(1)(i) to read as follows:

**§ 180.207 Requirements for requalification
of UN pressure receptacles.**

* * * * *

(d) * * *

(1) * * *

(i) Each seamless steel UN pressure receptacle, including pressure receptacles exceeding 150 L capacity installed in multiple-element gas containers (MEGCs) or in other service, must be requalified in accordance with ISO 6406:2005(E) (IBR, *see* § 171.7 of this subchapter). However, UN cylinders with a tensile strength greater than or equal to 950 MPa must be requalified by ultrasonic examination in accordance with ISO 6406:2005(E). For

seamless steel cylinders and tubes, the internal inspection and hydraulic pressure test may be replaced by a procedure conforming to ISO 16148:2016 in combination with ISO 16148:2016/Amd 1:2020(E) (IBR, *see* § 171.7 of this subchapter).

* * * * *

Issued in Washington, DC, on February 5, 2026, under authority delegated in 49 CFR 1.97.

Benjamin D. Kochman,

*Deputy Administrator, Pipeline and
Hazardous Materials Safety Administration.*

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Part III

Department of Homeland Security

U.S. Customs and Border Protection

19 CFR Parts 4, 103, and 113

Electronic Export Manifest for Vessel Cargo; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 4, 103, and 113

[Docket No. USCBP–2025–0911]

RIN 1651–AB59

Electronic Export Manifest for Vessel Cargo

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) proposes to amend its regulations to require the advance submission of electronic export manifest (EEM) information to CBP for cargo transported by vessel departing the United States. The proposed rule identifies the parties that would be eligible to transmit vessel EEM information and their responsibilities, and the time frames for transmission of the information prior to cargo loading or conveyance departure. Requiring advance transmission of EEM data would significantly improve cargo safety and security while minimizing disruption to the flow of commerce for exports in the sea environment.

DATES: Comments must be received by April 13, 2026.

ADDRESSES: Please submit comments, identified by docket number [USCBP–2025–0911], by the following method:

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

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. In accordance with 5 U.S.C. 553(b)(4), a summary of this rulemaking may also be found at <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: David Garcia, Program Manager, Outbound Enforcement and Policy Branch, Office of Field Operations, CBP, via email at cbpexportmanifest@

cbp.dhs.gov, or by telephone, 202–344–3277.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Public Participation
- II. Executive Summary
 - A. Purpose of the Electronic Export Manifest for Vessel Cargo
 - 1. Need for the Regulatory Action
 - 2. Statement of Legal Authority
 - B. Summary of the Major Provisions of EEM for Vessel Cargo
 - C. Costs and Benefits
- III. Background
 - A. Legal Authority
 - B. Current Regulations and Processes
 - 1. Current Vessel Cargo Export Manifest Data Requirements
 - 2. Current Vessel Cargo Export Information Transmission Time Frames
 - 3. Streamlining the Submission of Export Information for Vessel Cargo and Closing Enforcement Gaps
 - C. The ACE Export Manifest for Vessel Cargo Test
 - 1. The National Customs Automation Program
 - 2. Data Elements in the Test
 - 3. Test Expansion, Extension, and Modification and Renewal
 - 4. Results of the Test, Modification, Expansion, Extension and Renewal
 - D. Purpose and Need for the Rule
- IV. Proposed Regulatory Changes
 - A. Proposed EEM Requirement
 - B. Time Frame for Transmitting Advance Vessel and Cargo Departure Information
 - C. Parties Filing Advance Vessel and Cargo Departure Information
 - D. Initial Data Elements
 - E. Export Manifest Transportation Data
 - 1. Mandatory Elements
 - 2. Conditional Element
 - 3. Optional Elements
 - F. Export Manifest Cargo Data
 - 1. Mandatory Elements
 - 2. Conditional Elements
 - 3. Optional Elements
 - G. Electronic Export Manifest Holds and Do-Not-Load Instructions
 - H. Technical Amendments to 19 CFR Part 4
 - I. Proposed Amendments to Availability of Information
 - J. Proposed Amendments to CBP Bond Conditions
- V. Regulatory Analyses
 - A. Executive Orders 12866 and 13563 (Regulatory Planning and Review)
 - B. Regulatory Flexibility Act
 - C. Paperwork Reduction Act
 - D. Privacy
 - E. Unfunded Mandates Reform Act
- VI. Signing Authority

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the notice of proposed rulemaking.

U.S. Customs and Border Protection (CBP) also invites comments that relate to any economic, environmental, or

federalism effects that might result from this proposal. Comments that will provide the most assistance to CBP will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

II. Executive Summary

A. Purpose of the Electronic Export Manifest for Vessel Cargo

1. Need for the Regulatory Action

CBP’s mission includes ensuring cargo security and preventing smuggling while enforcing U.S. trade laws and regulations. Obtaining data in a timely and sufficient manner prior to cargo arriving or departing the United States allows CBP to review, conduct risk assessment, and effectively inspect cargo. Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 1415), CBP seeks to mandate the electronic transmission of export manifest information and eliminate reliance on paper. CBP proposes to identify and clarify the responsibilities of different parties to transmit information, describe the time frames for transmission of information prior to cargo loading or conveyance departure, identify enforcement actions available while outlining consequences of default, and limit post-departure filing for cargo transported by vessel to assess cargo security concerns.

The requirement to submit manifest data electronically under specific time frames will facilitate a more efficient trade process for all parties involved. The submission of electronic manifest data will significantly increase CBP’s ability to identify high-risk cargo, to ensure cargo security, and to prevent smuggling, as the earlier electronic submission allows CBP to use its Automated Targeting System (ATS) to assess all export manifest data transmitted. Trade members would also experience efficiencies with quicker CBP examination decisions, ability to resolve CBP requests, earlier mitigation of enforcement actions, and improved communication between CBP and trade members.

2. Statement of Legal Authority

CBP is authorized to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system of information before the cargo arrives or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). Section 343(a) of the Trade Act of 2002, as amended (Trade

Act) (19 U.S.C. 1415). Pursuant to 19 U.S.C. 1415(a)(3)(F), the required vessel cargo information being sought is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. CBP needs to obtain timely and sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation to review and conduct risk assessments to identify high-risk shipments and inspect cargo effectively.

B. Summary of the Major Provisions of EEM for Vessel Cargo

This proposed rule would mandate the transmission of EEM data for all cargo prior to departing the United States by vessel. CBP is proposing to revise 19 CFR 4.63 to mandate the electronic transmission of vessel export manifest information, identify the parties eligible to transmit information, describe the time frames prior to departure of the vessel in which the information is due, and identify an initial filing as early as practicable but no later than 24 hours prior to loading of cargo on the outbound conveyance from the port of export while requiring the remaining data to be transmitted at least two hours prior to such departure. Proposed 19 CFR 4.63 would designate information as either transportation data, cargo data, or empty container data, and list the data elements to be transmitted while identifying them as mandatory, conditional, or optional. The data elements identified as mandatory must be submitted, while elements identified as conditional would be submitted if applicable, and optional elements may be provided at the discretion of the filers. These elements would allow for CBP to inspect cargo effectively, ensure compliance with U.S. export control laws and regulations, and identify high-risk shipments for purposes of ensuring cargo safety and security.

Proposed 19 CFR 4.63(d) would require the mandatory initial filing of eight data elements, identified below, be submitted as early as practicable but no later than 24 hours prior to the loading of cargo on the outbound conveyance from port of export, by either the carrier, U.S. Principal Party in Interest (USPPI), or other qualified parties or their authorized agents. The results of the test, described in Section III.C., have shown that some outbound vessel carriers have the export manifest data days before departure and therefore would have all the necessary

information to submit the initial filing data to CBP and all other export manifest data well in advance of the 24-hour prior to departure deadlines. Except for the initial data elements, this rule would require the electronic export manifest information in proposed 19 CFR 4.63(e) and (f) to be transmitted two hours prior to vessel departure to a foreign port.

Proposed 19 CFR 4.63(g) would provide two types of holds, documentation and enforcement, that CBP may issue after a risk assessment of an outbound export manifest data transmission. Should any vessel cargo be identified by CBP as requiring review, the cargo would be held until required additional information related to the shipment is submitted or some other appropriate action is taken, as specified by CBP. These examinations allow CBP to secure the cargo, conduct risk assessment, and inspect cargo effectively. Once the cargo is cleared for loading, a release message would be generated and transmitted to the filer.

In addition to holds, proposed 19 CFR 4.63(h) would provide procedures for when a combination of risk assessment and intelligence point to a threat or terrorist plot in progress, and cargo or vessel container may contain an immediate threat to the vessel and its vicinity, and CBP issues a Do-Not-Load (DNL) instruction. Any cargo that is issued a DNL instruction must not be loaded onto a vessel and would require immediate adherence to the protocols and directions from law enforcement authorities.

CBP proposes to amend 19 CFR 4.75, which identifies a complete electronic export manifest and electronic export information requirements and the exceptions for post departure filing, in order to limit the situations where post departure filing would be permissible.

As an enforcement tool, CBP also proposes changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (international carrier bond) to provide for the imposition of damages on parties that do not provide the mandatory EEM data in the required manner and time frame. Specifically, CBP proposes to amend 19 CFR 113.62, 19 CFR 113.63, and 19 CFR 113.64 to address compliance with the proposed requirements regarding timely electronically provided outbound information in addition to the current provisions regarding timely electronic transmissions for merchandise or cargo which is inbound. With each of these provisions, CBP may assess damages if a violation occurs. CBP's primary goal is

compliance and CBP seeks to work alongside outbound vessel carriers and other parties to ensure that the proper data is provided in a timely manner for CBP to properly review the data, conduct risk assessment of high-risk shipments, and enforce U.S. export laws and regulations on U.S. exports in the sea environment.

C. Costs and Benefits

CBP anticipates that during the time period of analysis (2015–2030), this proposed rule would result in costs, cost savings, and benefits to CBP and trade members who export merchandise out of the United States by vessel. CBP estimates present value total costs to CBP and trade members would range from \$172 million in 2023 U.S. dollars using a three percent discount rate to \$102 million using a seven percent discount rate. Annualized total costs are expected to be \$13.7 million using a three percent discount rate and \$10.8 million using a seven percent discount rate. CBP identified other potential costs from this proposed rule but was unable to monetize them. These costs include time burdens to CBP officers if the proposed rule results in additional cargo examinations and trade members participating in the vessel EEM would also need to adjust business practices, be required to hold or obtain a qualifying bond, be required to have staff available to respond to CBP questions, and pay damages for any violations. Present value total cost savings to CBP and trade members are expected to be around \$195 million in 2023 U.S. dollars using a three percent discount rate, or \$15.5 million annualized, and \$119 million in 2023 U.S. dollars using a seven percent discount rate, or \$12.6 million annualized. CBP expects that there would be additional cost savings to trade members that CBP was unable to monetize, including reduced paper, printing, and storage costs related to the elimination of paper forms. CBP anticipates that benefits from this proposed rule would include improving CBP's security efforts by using ATS to conduct risk assessment on all sea exports, improving communication between Federal agencies with export jurisdiction, and improving efficiencies to participating trade members from transitioning from a paper to an electronic process. However, CBP was unable to monetize the expected benefits from this proposed rule. Present value total net cost savings from the implementation of this final rule would be around \$17.2 million in 2023 U.S. dollars using a three percent discount rate, or approximately \$1.4 million

annualized, and \$9.3 million in 2023 U.S. dollars using a seven percent discount rate, or around \$0.98 million annualized.¹ Table 1 displays CBP's estimates for annualized costs, costs savings, benefits, and net costs from this proposed rule using a three and seven

percent discount rate over the period of analysis (2015–2030). Additionally, based on CBP's perpetual time horizon calculations the present value of net cost savings from this proposed rule would be \$99.54 million and the annualized value of net cost savings will

be \$6.97 million using a seven percent discount. Therefore, this proposed rule is considered by CBP to be a deregulatory action for the purposes of meeting Executive Order 14192 requirements.

Table 1. Estimated Annualized Cost, Cost Savings, Benefits using 3% and 7% Discount Rate (2015-2030) (discounted 2023 U.S. dollars)

3% Discount Rate 7% Discount Rate

Costs		
Annualized monetized costs	\$13,690,847	\$10,804,868
Annualized quantified, but non-monetized costs	None	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.*	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.*
	Securing a Bond required to participate.	Securing a Bond required to participate.
	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to maximum of \$100,000 per departure.	Liquidated damages, \$5,000 for each violation up to maximum of \$100,000 per departure.
Cost Savings		
Annualized monetized cost savings	\$15,515,444	\$12,611,355
Annualized quantified, but non-monetized cost savings	None	None
Qualitative (non-quantified) cost savings	aper, printing and storage costs related to paper forms.	aper, printing and storage costs related to paper forms.
Benefits		
Annualized monetized benefits	None	None
Annualized quantified, but non-monetized benefits	None	None
Qualitative (non-quantified) benefits	Improve CBP's security efforts on sea exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all sea exports.**	Improve CBP's security efforts on sea exports, electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all sea exports.**
	Gained efficiencies from trade by switching from paper to electronic data transmission.	Gained efficiencies from trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.	Improved communication among Federal Agencies with export jurisdiction.
Net Costs Savings		
	\$1,372,691	\$981,445

* These costs are discussed in further detail in the Regulatory Period Costs section in the Regulatory Impact Analysis below.

** Details on how CBP conducts targeting and risk assessment prior to this proposed rule using paper forms is discussed in the 'Baseline' section of the regulatory impact analysis for this proposed rule.

¹ In the economic analysis for this proposed rule, CBP used a 3% and 7% discount rate for estimated

future quantified and monetized costs, costs

savings, and benefits based on guidance from OMB Circular A–4.

III. Background

A. Legal Authority

Section 343(a) of the Trade Act of 2002, Public Law 107–210, 116 Stat. 933, 981, as amended (Trade Act) (19 U.S.C. 1415(a)), authorizes CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-authorized electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable CBP to identify high-risk shipments for purposes of ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, pursuant to the laws enforced and administered by CBP. 19 U.S.C. 1415(a)(2), (a)(3)(F). In developing such regulations, CBP must adhere to the parameters set forth in section 343(a)(3) of the Trade Act (19 U.S.C. 1415(a)(3)) to balance the impact on the flow of commerce with the impact on cargo safety and security.

In accordance with these parameters, CBP consulted with carriers throughout the process of developing the proposed regulation and during the course of the ACE Export Manifest for Vessel Cargo Test (see Section III.C. below) that has been administered since 2015. See Trade Act, sec. 343(a)(3)(A), 19 U.S.C. 1415(a)(3)(A). As section 343(a)(3)(B) of the Trade Act (19 U.S.C. 1415(a)(3)(B)) requires, the proposed regulation would impose requirements on the party most likely to have direct knowledge of information to be provided. When requiring information from the party with direct knowledge of that information is not practicable, the proposed regulation takes into account how, under ordinary commercial practices, information is acquired by the party on which the requirement would be imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement would be imposed, the proposed regulation would permit that party to transmit information on the basis of what it reasonably believes to be true. The proposed regulation would require the submission of the export manifest data electronically in ACE for cargo transported by vessel, requiring certain elements that would only be available for a vessel and not for other modes of transportation, pursuant to section 343(a)(3)(D), of the Trade Act (19 U.S.C. 1415(a)(3)(D)). The information that would be collected under the proposed regulation would be

used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting. See Trade Act, sec. 343(a)(3)(F), 19 U.S.C. 1415(a)(3)(F). The proposed regulation specifically avoids imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law, as seen below in Section IV.C. See Trade Act, sec. 343(a)(3)(I), 19 U.S.C. 1415(a)(3)(I).

B. Current Regulations and Processes

Under current CBP regulations in title 19 of the Code of Federal Regulations (CFR), certain information must be submitted to CBP for vessels with export cargo leaving the United States for any foreign area, whether directly or by way of other domestic ports. First, 19 CFR 4.61 requires the vessel master or other proper officer to execute a Vessel Entrance or Clearance Statement on CBP Form 1300 filed with CBP pertaining to the outbound vessel or that the necessary information be transmitted electronically pursuant to a system authorized by CBP. Then, 19 CFR 4.63 requires the filing of a Cargo Declaration Outward With Commercial Form (CBP Form 1302A) with the appropriate CBP officer at the port from which clearance is being sought. This section requires that “copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a Vessel Entrance or Clearance Statement, CBP Form 1300, and Electronic Export Information (EEI) as are required by pertinent regulations of the Bureau of the Census, Department of Commerce” (Census) (that is, the Foreign Trade Regulations (FTR), provided in 15 CFR part 30). 19 CFR 4.63(a). Currently, 19 CFR 4.63 also allows for the filing of an incomplete Cargo Declaration in certain cases pursuant to 19 CFR 4.75. Under 19 CFR 4.75, the vessel master, or the vessel’s agent on behalf of the master, is required to file the complete vessel cargo manifest generally within four business days after clearance from each port in the vessel’s itinerary.

Additionally, 19 CFR 4.76 sets forth procedures and responsibilities of carriers filing outbound vessel manifest information via the Automated Export System (AES) in lieu of paper CBP Form 1302A. Approved carriers submitting outbound vessel manifest information electronically in AES under 19 CFR 4.76 must, with limited exceptions, submit the complete manifest data within ten calendar days after departure. Finally, 19 CFR 192.14 requires the U.S.

Principal Party in Interest (USPPI), the USPPI’s authorized agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI), to file any required EEI for the cargo on the vessel.² More details regarding the manifest requirements, the subject of this proposed rule, are provided in the next section.

1. Current Vessel Cargo Export Manifest Data Requirements

As indicated in the previous section, generally the vessel master or agent must file paper copies of the vessel cargo manifest on CBP Form 1302A. CBP Form 1302A consists of the following data elements:

- (1) Name of ship
- (2) Port where report is made (not required by United States)
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number
- (8) Marks and Numbers, Container Numbers, Seal Numbers
- (9) Number and kind of packages; Description of goods
- (10) Gross Weight (lb. or kg.)
- (11) Measurements (per HTS).

Though not a data element on CBP Form 1302A itself, the Internal Transaction Number (ITN) or AES Exemption Statement must be included on the outward manifest pursuant to 19 CFR 4.63(b) and 192.14(c)(3).³

As mentioned above, 19 CFR 4.76 provides that approved carriers may submit outbound vessel manifest information electronically in AES in lieu of submitting a paper CBP Form 1302A. The Sea Carriers Module was CBP’s early method of modernizing the submission of vessel manifest

² USPPI is defined in the FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1(c). FPPI is defined in the FTR as the party abroad who purchases the goods for export or to whom final delivery or end-use of the goods will be made. This party may be the Ultimate Consignee. 15 CFR 30.1(c).

³ Specifically, 19 CFR 4.63(b) requires that the ITN of the EEI covering each shipment for which EEI is required must be shown on the Cargo Declaration Outward With Commercial Form (CBP Form 1302A) in the marginal column headed “B/L No.” If EEI is not required for a shipment, 19 CFR 4.63(b) requires that a notation must be made on the Cargo Declaration Outward With Commercial Form (CBP Form 1302A) describing the basis for the exemption or exclusion using the reference number found in the Census Bureau’s FTR (see 15 CFR part 30, appendix B) where the particular exemption or exclusion is provided, that is, the AES Exemption Statement.

information. Sea carriers are required to apply for participation. However, few carriers in fact sought to participate and instead opted to use DIS. In this case, the carrier had ten calendar days after the departure of the vessel from each port to submit the manifest information to CBP. CBP also allows some qualifying outbound vessel carriers to participate in the Vessel Transportation Module (VTM) which provides the carriers the ability to transmit this export manifest data to CBP electronically via the Automated Commercial Environment (ACE) in lieu of the paper CBP Form 1302A, but very few outbound vessel carriers actively provide this information electronically. Also, participants in the ACE Export Manifest for Vessel Cargo Test may opt to submit EEM via ACE as detailed in Section III.C. below.

1. Current Vessel Cargo Export Information Transmission Time Frames

As noted above, under current regulations, information regarding vessel export cargo may be transmitted post-departure. Generally, the vessel cargo manifest may be filed in complete form or incomplete form (*pro forma*). However, the complete manifest must be filed with CBP before a vessel will be cleared to depart to a foreign country listed in 19 CFR 4.75(c). Otherwise, for shipments to a foreign country, an incomplete manifest may be filed with CBP at the departure port when accompanied by the proper bond pursuant to 19 CFR 4.75(a). For shipments from any State or the District of Columbia to Puerto Rico, a complete manifest or proper bond shall be filed with CBP within one business day of arrival in Puerto Rico as provided in 19 CFR 4.84(c)(2). For shipments from any State or the District of Columbia to noncontiguous territories of the United States other than Puerto Rico, or from Puerto Rico to any State or the District of Columbia to any other noncontiguous territory, a complete manifest or proper bond must be filed with CBP before departure as provided in 19 CFR 4.84(c)(1).

When filing an incomplete manifest under the terms of the required bond, the complete manifest must be filed timely with CBP by the master, or the vessel's agent on behalf of the master. For shipments to foreign countries, the complete manifest must be filed no later than four business days post-departure. 19 CFR 4.75(b). For shipments from the United States to Puerto Rico, the complete manifest must be filed no later than one business day after arrival in Puerto Rico. 19 CFR 4.84(c)(2).

As mentioned above, carriers submitting outbound vessel manifest information electronically in AES under 19 CFR 4.76 must submit the complete manifest data within ten calendar days after departure of the vessel from each port. However, if the destination of the vessel is a foreign port listed in 19 CFR 4.75(c), the carrier must transmit complete manifest information before vessel departure. The time requirements for electronic transmission of complete manifest information for carriers destined to Puerto Rico are the same as the requirements found in 19 CFR 4.84 and described above.

During the vessel EEM test, participants would transmit completed vessel export cargo manifest data electronically to CBP via ACE, at least 24 hours prior to the loading of that cargo or container onto a vessel. CBP expected that the deadline of 24 hours prior to loading the cargo onto vessels would provide CBP adequate time to conduct a proper review of export manifest data to enhance cargo safety and security measures prior to cargo being loaded and a vessel's departure. Identifying any high-risk cargo and containers prior to the loading of cargo onto vessels improves security measures while ensuring compliance with U.S. export laws and minimizes the disruption of the trade process at the U.S. port of export. Additionally, the deadlines for export manifest data transmission provide CBP the time to compare the export manifest data with any EEI submitted by USPPPI to further enhance security measures on cargo departing the United States in the sea environment.

During this initial phase of the vessel EEM test, CBP worked with outbound vessel carriers who agreed to participate and submit export manifest data electronically to CBP via ACE. CBP requested that vessel participants continue to submit CBP Form 1302A as they did before participating in the test so that CBP can capture any inconsistencies or issues with the electronic transmission of vessel EEM data to CBP. If an outbound vessel carrier was already providing data to CBP via VTM, those outbound vessel carriers do not provide the paper CBP Form 1302A to CBP. Additionally, if an outbound vessel carrier provides data through VTM and then participates in the vessel EEM, CBP did not require the carrier to submit both VTM and vessel EEM data.

Regarding the submission of EEI, the provisions of the Census FTR, 15 CFR 30.5(c), authorize an approved USPPPI or its authorized agent to transmit EEI up to five calendar days after the date of

export. This allows the presentation of manifest data and EEI after the departure of the vessel. *See* 19 CFR 4.75, 4.76, 4.84, and 15 CFR 30.4.

This post-departure process engenders security gaps.

2. Streamlining the Submission of Export Information for Vessel Cargo and Closing Enforcement Gaps

Under the current regulatory requirements, paper and electronic processes co-exist for the presentation of cargo and transportation information for outbound vessels. The FTR set forth in 15 CFR part 30, and the CBP regulations at 19 CFR 192.14(b)(1)(i), generally require the transmission of EEI for outbound vessel cargo no later than 24 hours prior to loading of the cargo on the vessel at the U.S. port of lading. Under CBP regulations at 19 CFR 4.63(a)(1), no vessel can clear directly for a foreign port or for a foreign port by way of another domestic port or ports unless a Cargo Declaration Outward with Commercial Form (CBP Form 1302A) is filed along with bills of lading relating to cargo encompassed by the manifest, together with a Vessel Entrance or Clearance Statement, CBP Form 1300. The Cargo Declaration Outward with Commercial Form (CBP Form 1302A) is generally submitted on paper, unless the carrier is eligible to submit electronically. Requiring the electronic submission of the export manifest information in lieu of a paper Cargo Declaration Outward with Commercial Form (CBP Form 1302A) would streamline the submission of this information.

As noted above, much export manifest information and EEI is not required to be provided until after departure of the vessel. Additionally, with a few exceptions, EEI is only transmitted when the value of merchandise in a shipment exceeds \$2500.00. 15 CFR 30.37 (y)(2). These regulatory gaps leave many shipments unavailable for CBP to review before they have already left the United States. The lack of pre-departure information, which includes commodity information submitted into CBP targeting systems, hinders CBP's ability to target and inspect cargo effectively to ensure cargo and conveyance safety and compliance with U.S. export control laws and regulations.

C. The ACE Export Manifest for Vessel Cargo Test

1. The National Customs Automation Program

In recognition of the shortfalls of the current regulations described above, on August 20, 2015, CBP published a

general notice in the **Federal Register** announcing a National Customs Automation Program (NCAP) Test⁴ to gauge the feasibility of requiring certain export manifest information to be filed electronically in ACE for vessel cargo. 80 FR 50644. Participants in the voluntary test agree to submit the export manifest data to CBP at least 24 hours before the cargo is loaded on the vessel, consistent with EEI transmission requirements. Participation in the test was initially limited to nine stakeholders composed of a mix of a certain number of outbound vessel carriers and freight forwarders or Non-Vessel Operating Common Carriers (NVOCCs) who met the eligibility requirements.

2. Data Elements in the Test

The ACE Export Manifest for Vessel Cargo Test data elements are similar, but not identical to the data elements required on CBP Form 1302A. The data elements are mandatory unless otherwise indicated. Data elements that are indicated as “conditional” must be transmitted to CBP only if the particular information pertains to the cargo. The ACE Export Manifest for Vessel Cargo data elements are to be submitted at the lowest bill level.

The data elements consist of:

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)
- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond Number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)

- (22) Split Shipment Indicator (Yes/No)
- (23) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.) (conditional)
- (24) Hazmat Indicator (Yes/No)
- (25) UN Number (conditional) (If the hazmat indicator is yes, the four-digit United Nations (UN) Number assigned to the hazardous material must be provided.)
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number (VIN) or Product Identification Number (conditional) (For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.)

3. Test Expansion, Extension and Modification and Renewal

On August 14, 2017, the Test was extended for an additional year (82 FR 37890). At the same time, the Test began accepting additional applications for all parties which met the eligibility requirements in lieu of the original nine stakeholders composed of outbound vessel carriers and/or freight forwarders.

CBP consulted with the Commercial Customs Operations Advisory Committee (COAC) to address issues concerning the quality, accessibility, and timeliness of export manifest data received during the test. One issue of concern was the availability of certain data elements required under the test 24 hours prior to loading of the cargo on the vessel in preparation for departure from the United States. COAC urged CBP to change the filing condition of those data elements.

After evaluating the initial phase of the ACE Export Manifest for Vessel Cargo Test and considering COAC's comments, CBP determined that, to better test the functionality and feasibility of submitting the specified export data at least 24 hours prior to loading of the cargo on the vessel, the filing condition for four of the data elements should be changed. The modified filing conditions enabled CBP to better determine the appropriate reporting requirements for each data element. (Data elements which are “mandatory” must be provided to CBP for every shipment. Data elements which are “conditional” must be provided to CBP only if the particular information pertains to the cargo. Data elements which are “optional” may be provided to CBP but are not required.)

CBP modified the ACE Export Manifest for Vessel Cargo Test to change the following four mandatory or conditional data elements to optional:

- Name of the master (Data Element #4)
- Number of house Bills of Lading (Data Element #9)
- Split Shipment Indicator (Data Element #22)
- Portion of Split Shipment (Data Element #23)

The remaining data elements under the ACE Export Manifest for Vessel Cargo Test continue to be mandatory, conditional, or optional as provided in the August 20, 2015, notice and as detailed in Section III.B.2. above.

It was noted in the expansion/modification that upon the conclusion of the ACE Export Manifest for Vessel Cargo Test, should CBP decide to conduct rulemaking to amend the regulations concerning the filing of the manifest for vessel cargo, CBP would reevaluate the filing conditions for each data element to determine the feasibility of requiring that data element to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel.

On April 27, 2022, CBP renewed the ACE Export Manifest for Vessel Cargo Test for an additional two years. (87 FR 25036.)

4. Results of the Test, Modification, Expansion, Extension and Renewal

The ACE Export Manifest for Vessel Cargo Test assesses the functionality regarding the filing of export manifest data for vessel cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE resulted in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This reduced costs for CBP, partner government agencies, and the trade community and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Vessel Cargo Test also examines the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel. (Under the current regulatory requirements, in most cases the complete manifest is not required to be submitted until after the departure of the vessel.) As described in the paragraph below, in the test, participants submit export manifest data electronically to ACE at least 24 hours prior to loading of the cargo on the vessel. This enables CBP to link the EEI submitted by the USPPPI with the export manifest information earlier in the process. This capability better enables

⁴ The NCAP was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057, 2188 (1993), as amended (19 U.S.C. 1411–15). See also 19 CFR 101.9(b) (regarding NCAP testing).

CBP to assess risk and effectively target and inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

Participants in the ACE Export Manifest for Vessel Cargo Test agreed to provide export manifest data electronically at least 24 hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. If the outbound vessel carrier files this ACE Export Manifest data, the electronic filing is in lieu of the paper filing of CBP Form 1302A and copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. If a freight forwarder or NVOCC files the ACE Export Manifest data, the carrier is still required to file one of the following: the CBP Form 1302A with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document; the 19 CFR 4.76 electronic equivalent, if the outbound vessel carrier is approved for this procedure; or the ACE Export Manifest data, if the outbound vessel carrier is a test participant.

The ACE Export Manifest data submission is used to target high-risk vessel cargo. The data should be available to test participants early in the planning stages of an export vessel cargo transaction. Data provided 24 hours prior to loading permits adequate time for proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods.

Any vessel cargo identified as potentially high-risk receives a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message is generated and transmitted to the filer.

The success of the test allowed CBP to determine that the electronic submission of manifests provides improvements in capabilities at the departure level. As a result of these improvements, CBP is now seeking to end the test and codify this program by proposing new regulations in this document.

The Vessel Export Manifest Test described 27 data elements to be included in the vessel electronic export environment. The following data elements (with numbering

corresponding to the list of data elements published in the General Notice published in 2015 (80 FR 50644)) are being carried forward from the test to the regulations unchanged:

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo.)
- (7) Bill of Lading number
- (9) Number of house Bills of Lading (optional)
- (10) Marks and Numbers
- (12) Seal Numbers (conditional)
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (21) AES Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number (noting that Product Identification Number has not been included) (conditional)

The following data elements were found to be problematic or superfluous and will not be carried forward in the proposed rule:

- (4) Name of master (optional)
- (22) Split Shipment Indicator (Yes/No)
- (23) (*i.e.*, 1 of 4, 4 of 10, 5 of 10—Final, etc.)
- (24) Hazmat Indicator (conditional)
- (27) Product Identification Number (noting that Vehicle Identification Number has been included.)

The following data elements have been re-named or reconfigured for clarity:

- (2) Name of ship or vessel is separated into two elements Vessel Name and Voyage Number
- (3) Nationality of ship is now described as Vessel Country Code (International Organization for Standardization (ISO) country code)
- (5) Port of lading is now described as Port of departure
- (6) Port of discharge is now described as Port of Unlading
- (8) Bill of Lading type (Master, House, Simple or Sub) is now described as Bill of Lading (Master, House, or Simple)
- (11) Container Numbers (conditional) is split and reconfigured as two data elements, Container Information (mandatory), and Load Status (Empty or Loaded) indicator (yes/no)
- (13) “Numbers and kind of packages” is now described as “The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier’s bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not

constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons)”

- (14) “Description of goods” is now described as “A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper); or, for a sealed container, the shipper’s declared description (generic descriptions, specifically those such as “FAK” (“freight of all kinds”), “general cargo,” and “STC” (“said to contain”) are not acceptable)”
- (15) Gross Weight (lb. or kg.) or Measurements (per HTS) is now described in the initial filing as “Total weight of cargo expressed in pounds or kilograms”.
- (16) Shipper name and address is now described in the initial data filing as “The shipper’s complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment). For mandatory export manifest cargo data due prior to departure but after the initial filing, the data element is described as “Shipper name and address (For empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty to transport).”
- (17) Consignee name and address is now described in the initial data filing as “The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered to in the foreign country. However, in the case of cargo shipped ‘to order of a [named party],’ the ‘to order’ party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party’s identity and contact information including address in the ‘Notify Party’ field).” For mandatory export manifest cargo data due prior to departure but after the initial filing, the data element is described as “Consignee name and address (For empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container).”
- (20) In-bond number (conditional) is now described as “In-bond type and or in-bond house bill number”.
- (25) 6-character Hazmat Code (UN (for United Nations Number) or NA (North American Number) and the

corresponding 4-digit identification number assigned to the hazardous material must be provided.) (conditional)

The following data element did not appear as a data element in the test and has been added as mandatory initial filing data to provide more accuracy:

- Estimated Scheduled Departure Date and Departure Port.

The following data elements did not appear as data elements in the test and have been added as mandatory transportation data elements to more accurately describe the transporting vessel and to describe where the carrier takes possession of the merchandise in order to more accurately describe the transportation chain:

- The vessel carrier identification SCAC Code (the unique standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association).

- Place carrier took possession of merchandise or empty container.

The following data element has been added as a conditional data element:

- Mexican Pedimento for cargo exported to Mexico.

The following data element has been added as an optional data element to provide CBP with a second party to notify if the original notify party cannot be reached:

- Secondary Notify Party SCAC.

D. Purpose and Need of the Rule

CBP's primary impetus for this regulatory initiative results from the fact that CBP seeks to mandate the electronic transmission of EEM, in addition to the EEI data required under 15 CFR part 30, clarify the responsibilities of different parties to transmit information, identify enforcement actions available while outlining consequences of default, eliminate any reliance of paper, and limit post-departure filing for cargo transported by vessel to assess cargo security concerns.

CBP proposes to amend the current regulations to require the submission of export manifest data electronically in ACE as an export requirement for cargo transported by vessel, under the authority of section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 1415). Proposed 19 CFR 4.63 would mandate the electronic transmission of export manifest information in the vessel environment, identify the parties eligible to transmit information, describe the time frames for transmission of information prior to cargo loading or conveyance departure, and prescribe an initial filing that must occur as early as practicable but no later

than 24 hours prior to loading of cargo at each port on the outbound conveyance.

Proposed 19 CFR 4.63 would designate information as transportation data, cargo data, electronic export information, or empty container data, and list the data elements to be transmitted while calling them out as mandatory, conditional, or optional. In addition, proposed 19 CFR 4.63 would provide direction regarding Hold and Do-Not-Load messages.

Furthermore, proposed 19 CFR 4.63 would require the electronic transmission of EEM information by outbound vessel carriers, and would permit non-vessel operating common carriers (NVOCCs), freight forwarders, customs brokers (CHB) or anyone with direct knowledge of the export manifest data to submit EEM. These actors may use the services of a shipping agent to transmit the data. The transmission would be required 24 hours prior to loading at each port except for a limited set of data that may be transmitted two hours prior to loading or, in some limited instances, post-departure. Parties other than EEI filers transmitting the information to CBP would be required to obtain a bond to guarantee timely, accurate performance. The rule would also remove obsolete references in Part 4 of the CBP Regulations, references to FTR provisions that no longer exist, and paper processes that are being eliminated.

The proposed regulations standardize data element requirements and electronic data transmission formats and processes and identify actors eligible to transmit information in the time frames required for completion of EEM transmissions. They also narrow the scope of information that can be presented post-departure of the outbound conveyance. The advance data can also allow for earlier mitigation of enforcement actions, such as examinations or information review.

IV. Proposed Regulatory Changes

CBP proposes to amend its regulations to require the submission of the export manifest data electronically in ACE as an export requirement for cargo transported by vessel, pursuant to section 343(a), of the Trade Act of 2002, as amended (19 U.S.C. 1415(a)). This proposed rule would require the transmission of EEM data for all cargo prior to loading onto vessels departing the United States and require outbound vessel carriers or their agents to present data related to the Vessel Entrance or Clearance Statement, CBP Form 1300 no later than two hours prior to departure of the vessel from the United States. By

mandating the transmission of EEM, this proposed rule would also eliminate the use of the paper CBP Form 1302A and encourage the transition to the electronic equivalent of the paper Vessel Entrance or Clearance Statement, CBP Form 1300 for vessel clearance, and prohibit submission of the vessel export manifest data post-departure. CBP anticipates that requiring the transmission of EEM data prior to loading of cargo onto a vessel would significantly improve CBP's ability to conduct proper cargo security enforcement and prevent smuggling while minimizing the disruption to the flow of goods during the export process in the sea environment. This proposed rule would use ACE to obtain, conduct risk assessment on, and screen EEM data for cargo being loaded onto vessels preparing to depart the United States and allow for the party which most likely has the direct information on cargo to provide the export manifest data to CBP.

For CBP, the proposed requirement to submit EEM would enhance cargo security because it would allow for improvements in targeting capabilities at the port level through the use of CBP's automatic targeting system (ATS). Port operations would enjoy considerable efficiencies through the elimination of paper manifests. Storage space currently reserved for manifest documents would be freed. Coordination and information exchange between CBP and other Government agencies with export jurisdiction would improve. Carriers, USPPs, NVOCCs, and other interested parties who transmit information would receive better and more rapid examination decisions from CBP.

CBP is proposing to amend 19 CFR 4.61 the application for clearance of a vessel departing for a foreign port requiring submission of the Vessel Entrance or Clearance Statement either electronically or by filing CBP Form 1300 prior to the conveyance.

CBP proposes to amend 19 CFR 4.62 to allow for electronic manifest corrections. In order to implement this requirement, CBP is primarily proposing to substantially revise 19 CFR 4.63 to add EEM to the required advance vessel and cargo departure information. CBP is also proposing to amend the last sentence of 19 CFR 4.72 to address potential failure to submit the required export certificate from the Department of Agriculture and resulting request for redelivery or penalties for failure to file the certificate.

CBP is also proposing to amend 19 CFR 4.75 to substantially limit post-departure manifest filing. Under this

proposed rule, the Vessel Entrance or Clearance Statement, CBP Form 1300, would continue to be required, but regulatory changes throughout 19 CFR part 4 would authorize use of its electronic equivalent. Additional proposed technical corrections to 19 CFR part 4 would remove references to sections of the FTR that have been removed from 15 CFR part 30 by Census, as well as remove references to “Customs” and replace them with references to “CBP” where applicable. CBP further proposes to remove 19 CFR 4.76, the sea carrier’s module, which was the original version of electronic filing which has not been used by the carriers and is no longer necessary. Proposed 19 CFR 4.81 would allow for electronic equivalents of paper forms. Proposed 19 CFR 4.82 would require a carrier to electronically transmit cargo information for merchandise to be transported via a foreign port or ports to subsequent ports in the United States to include information consistent with the initial filing of EEM data. Proposed 19 CFR 4.84 removes references to Census regulation 15 CFR 30.47 which has been removed.

Proposed 19 CFR 4.85 would revise and update the language to reflect the submission of bonds. Proposed 19 CFR 4.88 seeks to revise references to Cargo Declaration Form 1302A and replace it with Electronic Export Manifest or EEM data transmission.

Finally, CBP is proposing to revise the relevant bond conditions in 19 CFR part 113 to incorporate the EEM requirements.

This proposed rule, through the creation of single integrated pre-departure EEM, would limit post-departure filings to EEI submitted in accordance with the provisions of the FTR, agriculture certificates, and shipments between the United States and Puerto Rico. Post-departure filings are permitted for agricultural certificates where the certificate has been obtained but is unavailable at the scheduled time of a vessel’s departure. In that circumstance, the vessel may be cleared on the basis of the receipt of a statement, under the shipper’s or shipper’s agent’s letterhead, certifying the number of boxes, the number of pounds, the product name and the U.S. Department of Agriculture export certificate number that covers the shipment of the product. 19 CFR 4.72(a). Post-departure filings are permitted for shipments between the United States and Puerto Rico when a vessel which is not required to clear is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico. The master must file a complete

manifest, when required by the FTR (15 CFR part 30), and all required EEI within one business day after arrival, as defined in 19 CFR 4.2(b), with the appropriate CBP officer in Puerto Rico. If the complete manifest and all required EEI are not filed with the appropriate CBP officer within that time frame, an appropriate bond must be filed with the CBP officer for the timely production of the required documents. 19 CFR 4.84(c)(2).

A. Proposed EEM Requirement

Proposed 19 CFR 4.63 would require certain advance vessel and cargo departure information, to include mandating the electronic transmission of export manifest information in the vessel environment, that is, EEM. Proposed 19 CFR 4.63 describes the time frames for transmission of certain advance vessel and cargo departure information prior to cargo loading or conveyance departure and identifies the parties eligible to transmit such information. Proposed 19 CFR 4.63 would prescribe an initial filing of EEM data that must occur as early as practicable but no later than 24 hours prior to loading of cargo at each port on the outbound conveyance, and designate additional EEM data as transportation data, cargo data, or empty container data, listing the mandatory, conditional, or optional data elements to be transmitted. In addition, proposed 19 CFR 4.63 would provide direction regarding Do-Not-Load messages, and Documentation and Enforcement holds. Finally, proposed 19 CFR 4.63, along with proposed 19 CFR 4.75, would substantially limit post-departure data filings.

B. Time Frame for Transmitting Advance Vessel and Cargo Departure Information

Proposed 19 CFR 4.63(b) provides the time frame for transmitting certain advance vessel and cargo departure information, including the vessel clearance statement, EEM, and EEI. Specifically, proposed 19 CFR 4.63(b)(1) sets forth that Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent, must be presented to CBP by the outbound vessel carrier no later than two hours prior to departure of the vessel from the United States either directly or via another domestic port or ports.

Proposed 19 CFR 4.63(b)(2) sets forth the time frames for the submission of EEM data. An initial filing of EEM data would be required to be transmitted as early as practicable, but no later than 24 hours prior to loading of cargo on the vessel departing from the United States.

EEM data other than the initial filing, that is, export manifest transportation data, export manifest cargo data, and any data related to empty containers, would be required to be transmitted no later than two hours prior to loading of the cargo, or container as applicable, on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports. Proposed 4.63(b)(3) references the locations in the CBP regulations and FTR regarding the time frame for the transmission of EEI. Proposed 4.63(b)(4) requires the transmitted advance vessel and cargo departure information to be updated if any of the transmitted data changes or more accurate data becomes available. Proposed 19 CFR 4.63(b)(5) reiterates that only certain EEM or EEI may be filed post-departure as provided in 19 CFR 4.75, as revised and discussed below.

C. Parties Filing Advance Vessel and Cargo Departure Information

Consistent with section 343(a) of the Trade Act (19 U.S.C. 1415(a)), the proposed rule aims to impose the requirement to provide advance vessel conveyance and cargo departure information on the party most likely to have direct knowledge of it. In furtherance of that goal, the proposed rule recognizes that different parties might be best situated to provide certain types of EEM data. Under the proposed rule, the export manifest transportation data and any empty container data would always and only be required of the outbound vessel carrier, while the initial filing and/or the export manifest cargo data could be provided by any eligible party with direct knowledge of that information.

Accordingly, proposed 19 CFR 4.63(c)(1) provides that the outbound vessel carrier would be responsible for submitting the vessel clearance statement or transmitting its electronic equivalent and for transmitting the export manifest transportation data and data for any empty container. Should no other eligible party elect to transmit the initial filing and/or the export manifest cargo data, the outbound vessel carrier would be required to transmit it. The outbound vessel carrier could also choose to transmit the initial filing and/or export manifest cargo data even if another eligible filer transmits the information. Proposed 19 CFR 4.63(c)(2), consistent with the provisions of 19 CFR 192.14 and 15 CFR part 30, reiterates that the transmission of EEI is the responsibility of the USPPI, its authorized filing agent, or the authorized filing agent of the FPPI.

Proposed 19 CFR 4.63(c)(3) provides that any party with direct knowledge of the export information may elect to transmit the initial filing data and/or the export manifest cargo as well, so long as the filer meets the qualifications that require transmission of information through a CBP-approved electronic system. Such filers may include a customs broker, Automated Broker Interface (ABI) filer, non-vessel operating common carrier (NVOCC) as defined by 19 CFR 4.7(b)(3)(ii), or a freight forwarder as defined by 19 CFR part 112. If such a party does not elect to transmit EEM data, proposed 19 CFR 4.63(c)(4) would require the party that arranges for and/or delivers the cargo to the outbound vessel carrier to fully disclose and present to the outbound vessel carrier the cargo information required for the initial filing and the required export manifest cargo data. The outbound vessel carrier must transmit this information to CBP.

Any party transmitting any of the advance vessel conveyance and cargo departure information described in proposed 19 CFR 4.63 would be required by proposed 19 CFR 4.63(c)(5) to possess the appropriate bond containing all the necessary provisions of 19 CFR 113.62 (Basic Importation and Entry Bond), 19 CFR 113.63 (Basic Custodial Bond), or 19 CFR 113.64 (International Carrier Bond). CBP is proposing to amend the regulations covering certain bond conditions, as described in Section IV.H., to incorporate the advance vessel conveyance and cargo departure information requirements.

If any required information is in the possession of a third party who is not an eligible filer set forth in proposed 19 CFR 4.63(c)(1)–(3), proposed 19 CFR 4.63(c)(6) would require the third party to fully disclose and present the required data to either the outbound vessel carrier or other eligible electronic filer, as applicable, which must transmit such data to CBP. Consistent with the provisions of section 343(a)(3)(B) of the Trade Act (19 U.S.C. 1415(a)(3)(B)), proposed 19 CFR 4.63(c)(7) provides that where the party electronically transmitting the required EEM data receives any of this information from another party, CBP would take into account how, under ordinary commercial practices, the transmitting party acquired such information, and whether and how such party would be able to verify the information. Where the transmitting party would not reasonably be able to verify the information, CBP would permit the party to electronically transmit

information on the basis of what such party reasonably believes to be true.

D. Initial Data Elements

For the mandatory initial filing required as early as practicable but no later than 24 hours prior to cargo loading on the outbound conveyances, CBP selected seven data elements from the vessel EEM test and added one new data element, Estimated Scheduled Departure Date and Departure Port. Additionally, seven of the initial filing data elements have their descriptions revised in this proposed rule to provide additional clarity on the data required. The carrier would have the ultimate responsibility to load, hold, or not load the merchandise. USPPIs and other parties qualified to transmit data (or their authorized agents) are eligible to submit the initial data filing, if however, no other eligible party makes such an election, then the outbound vessel carrier must transmit the initial data filing under proposed section 4.63(d) as follows:

- (1) Bill of Lading number;
- (2) The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);
- (3) Total weight of cargo expressed in pounds or kilograms;
- (4) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper); or, for a sealed container, the shipper's declared description (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," "bulk cargo" and "STC" ("said to contain") are not acceptable);
- (5) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment);
- (6) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo would be delivered in the foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact

information, including address, in the "Notify Party" field.);

- (7) The estimated scheduled departure date and departure port; and
- (8) AES Internal Transaction Number (ITN) or AES Exemption Statement (per shipment).

Under proposed 19 CFR 4.63(b), CBP would require the remainder of advance data to be transmitted two hours prior to loading the vessel for departure to a foreign port or for a foreign port by way of other domestic ports. That data, along with the initial filing data, comprises the vessel electronic export manifest data, containing all additional data elements to be described as export manifest transportation data, cargo data, electronic export information, and empty container data.

E. Export Manifest Transportation Data

In proposed 19 CFR 4.63(e), the following lists of data elements display CBP's proposed mandatory, conditional, and optional export manifest transportation data elements.⁵

1. Mandatory Elements

Proposed 19 CFR 4.63(e)(1) sets forth the mandatory export manifest transportation data elements that would be required in all circumstances, and are as follows:

- (1) Mode of transportation data (containerized vessel cargo or non-containerized vessel cargo);
- (2) Vessel Country Code (International Organization for Standardization (ISO) country code);
- (3) Vessel Name;
- (4) Voyage Number;
- (5) Port of Departure *;
- (6) Port of Unlading;
- (7) Date of Departure;
- (8) Bill of Lading type (Master, House or Simple);
- (9) Vessel Code (International Maritime Organization (IMO) code);
- (10) The vessel carrier identification SCAC code (The unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes; see § 4.7a(c)(2)(iii) of this chapter.);
- (11) Container information *;
- (12) Load Status (Empty or Loaded); and
- (13) Place carrier took possession of merchandise or empty container.

2. Conditional Element

As provided in proposed section 4.63(e)(2), the seal number(s) constitutes

⁵ Certain data elements identified with an asterisk require lower-level data elements to be completed per the Electronic Export Manifest Implementation Guidelines.

conditional transportation data and must be transmitted by the outbound vessel carrier when applicable. The seal numbers must be provided for all seals affixed to containers to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

3. Optional Elements

Proposed section 4.63(e)(3) lists optional data elements that may be provided by the eligible party transmitting transportation data, and are as follows:

- (1) Marks and Numbers;
- (2) Number of house Bills of Lading; and/or
- (3) Country of Ultimate Destination.

F. Export Manifest Cargo Data

For proposed rule section 4.63(f), the following list of data elements displays CBP's proposed mandatory, conditional, and optional export manifest cargo data elements. The mandatory elements must be transmitted and may be transmitted by any eligible party described above. If the information below has already been transmitted in the initial filing, the filer does not need to transmit it again unless there are updates or changes.

1. Mandatory Elements

Proposed 19 CFR 4.63(f)(1) sets forth the mandatory export manifest cargo data elements that would be required in all circumstances, and are as follows:

- (1) Shipper name and address (For empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty container to transport.);
- (2) Consignee name and address (For empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container.);
- (3) Port of Lading;
- (4) Bill of Lading numbers;
- (5) Bill of Lading type (Master, House, or Simple);
- (6) Cargo description;

2. Conditional Elements

Proposed 19 CFR 4.63(f)(2) sets forth the conditional export manifest cargo data elements that would be required when applicable, and are as follows:

- (1) In-bond number and type or in-bond house bill number;
- (2) Mexican Pedimento (only for cargo exported to Mexico);

- (3) Notify Party name and address;
- (4) Chemical Abstract Service (CAS) Registry Number;
- (5) Additional Party Details;
- (6) 6-character Hazmat Code (UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided).

3. Optional Elements

Proposed section 4.63(f)(3) lists optional data elements that may be provided by the eligible party transmitting cargo data, and are as follows:

- (1) Secondary Notify Party SCAC; and
- (2) Vehicle Identification Number (VIN).

G. Electronic Export Manifest Holds and Do-Not-Load Instructions

Once the outbound vessel carrier or other trade member electronically transmits the export manifest empty container, transportation, and cargo data to CBP via ACE, CBP would validate or if necessary, notify the responsible party of any holds under proposed sections 4.63(g) and (h). The process was designed to issue two different types of holds, a 2H Documentation hold and a 1H Enforcement hold. The party that transmitted the vessel export manifest data to CBP is responsible for responding to any holds issued upon CBP review of that data. A 2H Documentation hold notifies the party that transmitted the export manifest data of missing data elements or invalid information that the party would need to revise or correct.

Electronic data transmission would allow CBP to use its ATS for all exported cargo in the sea environment and the integrated system would conduct the majority of risk assessment, screening and review of the data, limiting the time burden to CBP officers to conduct manual review of such data. The submitting party must then work with CBP to provide the appropriate information, address issues or answer questions to release any hold(s). Until the hold(s) are released, that cargo cannot be loaded onto the vessel. CBP anticipates that when export manifest data is provided within the required deadlines of this proposed rule there should be very few if any instances where CBP issues a hold after cargo is loaded onto the vessel. However, if a hold is issued after loading the cargo or container onto the vessel, the outbound vessel may not depart or transport that cargo or container until the responsible party resolves all holds or that cargo is unloaded from the vessel.

CBP officers would manually review all export manifest data transmissions for which holds are issued for additional or corrected information. A Do-Not-Load or hold may be issued where CBP officers would conduct cargo examinations if necessary prior to loading the cargo or container onto the vessel. CBP anticipates that obtaining this export manifest data through the integrated system would help CBP work with outbound vessel carriers and other parties to address almost all outstanding issues resulting from CBP review before loading the cargo onto a vessel attempting to depart the United States. This would significantly reduce the instances where issues would be addressed after the cargo is loaded onto the vessel and would minimize requests for cargo returns or discharges at second U.S. ports and any other potential delays resulting from a CBP officer's examination of cargo in those scenarios.

CBP retains the enforcement discretion to assess penalties and/or claims for liquidated damages when a violation occurs. Any party that violates the requirements for data transmission as described above in this proposed rule is subject to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure.

Although there is the possibility for enforcement action, compliance is CBP's goal and CBP aspires to work alongside outbound vessel carriers and other trade members to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment to identify high-risk shipments and enforce U.S. export laws and regulations as to U.S. exports in the sea environment.

H. Technical Amendments to 19 CFR Part 4

CBP proposes to amend 19 CFR 4.61(a) to account for the electronic transmission of Vessel Entrance or Clearance Statement, CBP Form 1300, and CBP's response via ACE. In accordance with such an amendment, CBP further seeks to amend sections 4.61(b) and 4.61(c) to add in the electronic equivalent of Vessel Entrance or Clearance Statement, CBP Form 1300, and electronic receipt of required electronic vessel manifest information.

CBP also proposes 19 CFR 4.63 to be amended for a more inclusive heading of EEM and what is required in advance of export, specifically, "Electronic information for vessel conveyance and cargo required in advance of export; Electronic Export Manifest (EEM); Electronic Export Information (EEI)." CBP's proposed amendment includes

the general requirement in section (a) to address the electronic equivalent of the Vessel Entrance or Clearance Statement, CBP Form 1300, and type of information that is required; from whom it is required; the time in which the information is required; and whether examinations, Do-Not-Load or Hold instructions need to be addressed. No vessel would be cleared directly for a foreign port, or for a foreign port by way of another domestic port (see § 4.87(b)), unless CBP receives from the outbound vessel carrier a Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent.

CBP must also receive from the outbound vessel carrier, or other eligible filer as specified in paragraph (c), electronic information concerning the vessel and its cargo, as enumerated in paragraphs (d), (e), and (f) of this section. CBP proposes to remove 19 CFR 4.76 as the procedures and responsibilities are outdated and lack specificity and the Sea Carrier's Module is no longer being used by carriers. The timing, programming system, and message format have all been updated in the proposed new regulations and replaced with the EEM.

I. Proposed Amendments to Availability of Information

CBP proposes to amend 19 CFR 103.31 (Information on vessel manifests and summary statistical reports, disclosure to members of the press). Section 103.31 sets forth limited access to information on outward vessel manifests to accredited members of the press and the public. Currently, "only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public." 19 CFR 103.31(a)(1). Subject to the confidentiality requirements of 19 U.S.C. 1431 and 19 U.S.C. 1415(a)(3)(G), this proposed amendment will protect the privacy of business proprietary and any other confidential cargo information provided to CBP including any personally identifiable information before access to the manifest is provided to the public. CBP seeks to expand access to additional data elements listed in 19 CFR 103.31(a)(1) consistent with what is provided to CBP from the vessel manifests while maintaining the

provisions for confidentiality should confidential treatment be requested. CBP also proposes to amend sections 103.31(d)(1)(iii) and (d)(2)(iii) to update the physical address for certification submissions. CBP also proposes to amend section 103.31(e) to address technology updates recognizing that data sought by the public will be made available via secure file transfer protocol (SFTP) in lieu of CD-ROM and that payments for such requests should be made via wire transfer.⁶

J. Proposed Amendments to CBP Bond Conditions

As an enforcement tool, CBP also proposes changes to the relevant bond provisions in 19 CFR 113.62 (basic importation and entry bond), 19 CFR 113.63 (basic custodial bond), and 19 CFR 113.64 (International carrier bond) to provide CBP with authority to impose liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. Specifically, CBP proposes 19 CFR 113.62(k)(2) to address electronically provided outbound information. Section 113.62(k) currently addresses electronic transmissions for merchandise or cargo which is inbound via air or truck. CBP also proposes to amend 19 CFR 113.63(g) to add a descriptive heading for electronic entry and/or advance cargo information requirements and include advance outbound cargo information provided to CBP electronically in the manner and in the time period required by law and regulation. CBP further proposes to amend 19 CFR 113.64(d) to include outbound information provided electronically by international carriers in the manner and time period required under law and regulation.

Additionally, CBP proposes to amend 19 CFR 113.64(e) to include all transmitting parties other than the carrier who agree to provide advance electronic information. Finally, CBP proposes to amend 19 CFR 113.64(j) to provide export information including but not limited to certifications in the manner and time provided by law. At present, the text of 19 CFR 113.64(j) is obsolete as it refers to processes that were in existence when Shipper's Export Declarations (SEDs) were in use. However, SEDs were superseded on October 1, 2008, with the implementation of the FTR and by the EEI filed in the AES or through the AESDirect. See 15 CFR 30.1. See also 19 CFR 192.14, regarding required EEI.

⁶Executive Order 14247.

V. Regulatory Analyses

A. Executive Orders 12866, 13563 and 14192

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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. Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides 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."

The Office of Management and Budget (OMB) has not designated this proposed rule a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this proposed rule.

This proposed rule, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action.

In summary, CBP expects that from 2015 to 2030 this proposed rule would result in a combined net cost savings to CBP, outbound vessel carriers, and other trade members engaging in the export process of goods departing the United States in the sea environment ranging from \$17.2 million (2023 U.S. dollars) using a three percent discount rate to \$9.3 million (2023 U.S. dollars) using a seven percent discount rate.

CBP anticipates that this proposed rule would also provide added benefits from enhanced cargo safety and security measures by improving compliance and the enforcement of U.S. export laws and regulations on U.S. exports in the sea environment. The following is the economic analysis of the potential impacts from this proposed rule.

Purpose, Background and Baseline

CBP's mission includes ensuring cargo security and preventing smuggling, while enforcing U.S. trade laws and regulations. CBP needs to obtain timely and sufficient data prior to cargo arriving or departing the United States via any mode of commercial transportation in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively. According to Section 343(a)

of the Trade Act of 2002, as amended Trade Act (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). The requirement to submit manifest data electronically facilitates a more efficient trade process for all parties involved.

Submitting electronic manifest data (specifically pre-arrival or pre-departure) significantly increases CBP's ability to identify high-risk cargo to ensure cargo security and to prevent smuggling. Unlike export manifest data submitted on paper, export manifest data transmitted electronically to CBP allows CBP to use its Automated Targeting System (ATS) to target all export manifest data transmitted. The transmission of electronic manifest data also enhances the coordination and data exchange between Federal agencies overseeing cargo arriving and departing the United States.

Additionally, electronic manifest data improves CBP's review process, allowing CBP to make better examination decisions while also reducing the time required to make such decisions. Trade members would also experience efficiencies through quicker CBP examination decisions and improved communication between CBP and trade members. Resolving CBP requests for additional information to clarify or correct data electronically transmitted would be more efficient in an electronic environment.

Prior to this proposed rule, CBP does not require the electronic transmission of vessel cargo manifest data for all export cargo to CBP prior to departure in the sea environment. Although outbound vessel carriers provide some export manifest data to CBP electronically, the data elements are not always provided prior to departure and CBP believes that the data elements are insufficient for CBP to conduct proper cargo safety and security review for goods departing United States in the sea environment. Current regulations⁷ require the U.S. Principal Party in Interest (USPPI), the USPPI's agent, or the authorized filing agent of the Foreign Principal Party (FPPI) to transmit EEI to CBP through the ACE. This EEI should be provided to CBP and verified no later than 24 hours prior to the cargo departing the U.S. port of export. CBP acknowledges that, although this pre-departure data is helpful, the information provided by

EEI falls short of the data CBP requires to conduct proper cargo security screening while enforcing U.S. export control laws and regulations.

The required transmission of EEI is also subject to certain exemptions as established by the Census regulations,⁸ which generally only require EEI transmission on merchandise valued greater than \$2,500 and do not require the transmission of EEI for shipments destined for Canada, unless the shipment contains certain controlled items under the Export Administration Regulations (EAR) or is being transshipped to another destination.⁹

Therefore, numerous cargo and shipments of merchandise of smaller value departing the United States by sea do not have EEI transmitted for CBP to review. The lack of detailed electronic manifest data for some shipments and the unavailability of electronic cargo data on lower value merchandise shipments impedes CBP's enforcement efforts on sea exports. During the export process, the outbound vessel carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends covering cargo for which EEI need not be filed. The outbound vessel carrier must then annotate the carrier's outward manifest, waybill, or other export documentation with the applicable Automated Export System proof of filing, post-departure, downtime, exclusion, or exemption citations, conforming to the approved data formats found in the FTR.¹⁰

CBP also obtains additional vessel export cargo data, mostly in paper form, as per existing CBP regulations,¹¹ which require the submission of certain manifest data to CBP for vessels shipping goods out of the United States to any foreign area, whether directly or by way of other domestic ports. CBP requires outbound vessel carriers to complete and submit to CBP a Vessel Entrance or Clearance Statement on CBP Form 1300 for the outbound vessel. Additionally, the outbound vessel carriers or agent are required to file a Cargo Declaration Outward with Commercial Form (CBP Form 1302A) and submit this paper form to CBP at each port from which clearance is being sought.¹² Along with the CBP Form

1302A, outbound vessel carriers or agent must provide to CBP complete vessel cargo manifest with a compilation of all bills of lading or equivalent commercial documents relating to all cargo within the manifest.¹³ CBP allows some qualifying outbound vessel carriers to participate in the Vessel Transportation Module (VTM) which provides the carriers the ability to transmit this export manifest data to CBP electronically via the ACE in lieu of the paper CBP Form 1302A, but very few outbound vessel carriers actively provide this information electronically.

Although CBP requires the submission of some export manifest data in the sea environment, prior to this proposed rule most of this data is not provided electronically or prior to the vessel departing the United States. Current regulations allow for the CBP Form 1302A, the vessel export manifest, and supporting documents to be submitted in a complete or incomplete form at the time of departure, depending on the foreign country to which the cargo is being shipped.¹⁴ Conditional on the outbound vessel carrier holding a proper bond, the outbound vessel carrier has four business days post departure to submit the completed vessel export manifest data for shipments to foreign countries, seven business days post arrival for shipments to Puerto Rico, and seven business days post departure for shipments to other U.S. territories.¹⁵ Additionally, if the

Nationality of ship, (4) Name of master, (5) Port of loading, (6) Port of discharge, (7) Bill of Lading number, (8) Marks and Numbers, Container Numbers, Seal Numbers, (9) Number and kind of packages; Description of goods, (10) Gross Weight (lb. or kg.) or Measurements (per HTS), (11) Internal Transaction Number (ITN), or AES Exemption Statement.

¹³ Bills of lading are documents that essentially act as a receipt and contract for transporting cargo and goods and come from a number of sources depending on which party is privy to the information and the timing of when the information is provided. A house bill contains cargo details and is issued directly by a NVOCC, or freight forwarder. This bill acts as the receipt of goods that are going to be exported and provides export manifest data at its lowest level. Outbound vessel carriers can issue a Master bill which includes all other export manifest information such as transportation details for the vessel which could cover any number of house bills that are included on that vessel. Additionally, in the case where a NVOCC or freight forwarder is not involved in the shipment transaction and the outbound vessel carrier has the specific cargo data available the outbound vessel carrier can issue a simple bill which is similar to a house bill and contains cargo details at the lowest bill level of export manifest data.

¹⁴ See 19 CFR 4.75.

¹⁵ As per 19 CFR 4.84(c)(2), for shipments from any State or the District of Columbia to Puerto Rico, a complete manifest or proper bond shall be filed with CBP within one business day of arrival in Puerto Rico. As provided in 19 CFR 4.84 (c)(1), for

⁸ See 15 CFR part 30.

⁹ See 15 CFR 30.36.

¹⁰ See 15 CFR part 30.

¹¹ See 19 CFR 4.61, 19 CFR 4.63, 19 CFR 4.75 & 19 CFR 4.76.

¹² CBP Form 1302A consists of the following data elements; (1) Name of Ship, (2) Port where report is made (not required by United States), (3)

⁷ See 19 CFR 192.14.

outbound vessel carrier is approved to submit the outbound vessel manifest information electronically and participates in the VTM, then the carrier is provided ten calendar days post departure to provide the completed vessel export manifest data to CBP for shipments to foreign countries.¹⁶ The provisions of 15 CFR 30.5(c) authorize USPPs that provide EEI data for vessel exports to transmit the completed EEI up to five calendar days after the date of export. Given the existing regulations prior to this proposed rule, outbound vessel carriers do not provide export manifest data electronically for most exports before loading cargo or prior to the vessel departing the United States. This lack of detailed pre-departure electronic vessel export manifest data impedes CBP's ability to effectively conduct cargo safety, and security assessments and to prevent smuggling for cargo departing the United States in the sea environment.

Prior to this proposed rule, CBP does not typically receive export manifest data until days after a vessel and cargo depart the U.S. port of export. In the event that CBP identifies high-risk cargo or a container that has already been loaded, and the vessel has departed the U.S. port of export, CBP can issue a request that the outbound vessel carrier return the cargo or container. When a request for return is issued by CBP, outbound vessel carriers usually bring the cargo or container back to the United States after the vessel arrives at the foreign port and upon the vessel's return to the United States.

Additionally, if the vessel's itinerary stops at a second U.S. port, CBP can request the outbound vessel carrier to discharge the cargo or container at that second port. In either scenario, returning a container from a foreign port or discharging at a second U.S. port results in significant additional costs to outbound vessel carriers and trade members. In some instances, when outbound vessel carriers provide export manifest data four days or more post-departure, outbound vessel carriers have already delivered the cargo to a foreign port before submitting export manifest data to CBP or before CBP has the time to review the data. Many times, CBP does not even review the export

manifest data because even if CBP were to identify a high-risk cargo or container, the exported cargo is untraceable once it has been released at a foreign port and outbound vessel carriers are unable to track down the cargo or container. As a result, in the sea environment, CBP only reviews a small amount of total exported cargo data prior to departure or prior to delivery to a foreign port. Ideally, CBP officers would obtain all export manifest data pre-departure and prior to the cargo loading onto a vessel. This would allow CBP to conduct its review and risk assessment on all export cargo prior to loading that cargo or container onto a vessel or before the vessel departs the United States. If CBP conducts its review prior to loading the cargo and if it identifies a high-risk cargo, CBP can prevent the loading of cargo or containers onto a vessel until CBP can conduct a manual examination. However, because the majority of export manifest data is provided post-departure CBP is usually unable to prevent high-risk cargo from being loaded onto vessels and departing the United States in the sea environment.

CBP has defined the process described above as the baseline. The analysis of this proposed rule attempts to measure any incremental costs, costs savings or benefits compared to the baseline scenario.

The Vessel EEM Test

In order to enhance CBP's efforts to ensure cargo security while also preventing smuggling and to further implement the Trade Act, CBP has been working towards developing a new process to require the transmission of EEM data for all cargo and containers departing the United States in the sea environment. CBP expects that the transmission of pre-departure EEM data would help CBP obtain all the necessary information and data to successfully review and conduct risk assessment and screening efforts before loading cargo onto vessels at U.S. ports of export.

In September 2015, CBP introduced a two-year test program, referred to in the analysis as the Vessel Electronic Export Manifest Test (vessel EEM test), to determine the feasibility of requiring outbound vessel carriers or their agents, and non-vessel operating common carriers (NVOCCs), to provide CBP with pre-departure export manifest data for vessel exports, electronically via ACE, within a specified time before cargo departed the United States in the sea environment.¹⁷ The vessel EEM test

created a single automated export processing platform for export manifest, commodity, licensing, export control and export risk assessment. In order for CBP to test the functionality of this new process, CBP initially limited participation in the vessel EEM test to nine trade members. CBP limited participation in the vessel EEM test to parties that had the capability of transmitting export manifest data to CBP in the acceptable format via ACE.¹⁸ During this initial phase of the vessel EEM test, CBP worked with outbound vessel carriers who agreed to participate and submit export manifest data electronically to CBP via ACE. CBP requests that vessel participants continue to submit CBP Form 1302A as they did before participating in the test so that CBP can capture any inconsistencies or issues with the electronic transmission of vessel EEM data to CBP.¹⁹ The responsibility to provide the proper export manifest data resides with the outbound vessel carrier regardless of whether an NVOCC has also submitted manifest data electronically. During the vessel EEM test, CBP still requires outbound vessel carriers to submit a Vessel Entry or Clearance Statement on CBP Form 1300, prior to that vessel's departure from a U.S. port of export.

During the vessel EEM test, CBP requests that participants transmit completed vessel export cargo manifest data electronically to CBP via ACE, at least 24 hours prior to the loading of that cargo or container onto a vessel. CBP expected that the deadline of 24 hours prior to loading the cargo onto vessels would provide CBP adequate time to conduct a proper review of export manifest data to enhance cargo safety and security measures prior to cargo being loaded and a vessel's departure. Identifying any high-risk cargo and containers prior to the loading of cargo onto vessels improves security measures while ensuring compliance

found in 19 CFR 192.14, are not affected by the vessel EEM test or this proposed rule.

¹⁸ Prospective participants must have the technical capability to submit data electronically to CBP and receive response message sets via Cargo IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. Unified XML may not be immediately available at the start of the test. However, parties wishing to utilize Unified XML may be accepted, pending its development and implementation.

¹⁹ CBP notes that if an outbound vessel carrier was already providing data to CBP via VTM, those outbound vessel carriers do not provide the paper CBP Form 1302A to CBP. Additionally, if an outbound vessel carrier provides data through VTM and then participates in the vessel EEM, CBP did not require the carrier to submit both VTM and vessel EEM data.

shipments from any State or the District of Columbia to noncontiguous territories of the United States other than Puerto Rico, or from Puerto Rico to any State or the District of Columbia to any other noncontiguous territory, a complete manifest or proper bond must be filed with CBP before departure.

¹⁶ If the destination of the vessel is a foreign port listed in 19 CFR 4.75(c), the carrier must transmit the completed vessel export manifest data before the departure of the vessel.

¹⁷ The deadlines and requirements for the transmission of EEI data, as per current regulations

with U.S. export laws and minimizes the disruption of the trade process at the U.S. port of export. Additionally, the deadlines for export manifest data transmission provide CBP the time to compare the export manifest data with any EEI submitted by USPPI to further enhance security measures on cargo departing the United States in the sea environment.

The vessel EEM test allows participants to provide and revise export manifest data electronically on a flow basis, whenever the information becomes available during the export process, before loading the cargo onto vessels. Transmitting vessel export manifest data electronically via ACE as requested during the vessel EEM test allows for the integrated system to conduct a large portion of the review process using data validations, checks, and risk assessment measures, prior to the loading of cargo onto vessels. Additionally, upon transmission of the pre-departure electronic manifest export data, CBP is able to review information on a flow basis while outbound vessel carriers or NVOCCs provide updated data throughout the export transaction process.

The integrated system implemented during the vessel EEM test improves CBP risk assessment and screening efforts of cargo and shipments. When outbound vessel carriers or NVOCC's transmit export manifest data, the integrated system automates most of the review process and generates holds to notify the outbound vessel carriers or NVOCCs of outstanding issues with the data provided. Depending on the issue identified by the integrated system, a different hold is issued and must be resolved prior to the cargo being loaded onto the vessel. CBP designed the integrated system in the vessel EEM test to issue two different types of holds, a 2H Documentation hold and a 1H Enforcement hold. The party that transmitted the vessel export manifest data to CBP is responsible for responding to any holds issued upon CBP review of that data. A 2H Documentation hold notifies the party that transmitted the export manifest data of missing data elements or invalid information that the party would need to revise or correct. In the instance of a 2H Documentation hold, the responsible party must update the missing or incorrect reference data to release the hold on the cargo or container. Until CBP releases the hold, the cargo may not be loaded onto the vessel.

If the integrated system identifies a potential high-risk cargo or container, then the system automatically generates a 1H Enforcement hold which requires

a CBP officer to conduct a manual review of the export manifest data transmitted. The integrated system notifies the party that transmitted the data of the hold and if CBP needs to conduct further examination of the data transmitted or if a manual examination is necessary. These holds can also be issued and addressed even if the cargo has already been loaded onto the vessel. If a 1H Enforcement hold is issued after loading the cargo onto the vessel and CBP requests to manually examine cargo, the outbound vessel carrier must coordinate with the appropriate parties to remove the cargo or container before departure so CBP officers can manually examine the cargo or container. If the vessel has already departed the U.S. port of export, the outbound vessel carrier can return the cargo or container from a foreign port for CBP to examine or discharge the cargo or container if the vessel is stopping at a second U.S. port. If a CBP officer determines during manual review of vessel export manifest data that cargo or a container contains a potential threat to the vessel and its vicinity, a Do Not Load (DNL) instruction is issued which prohibits any party that currently has physical possession of that cargo from moving that cargo or container.

The electronic transmission of export manifest data in advance helps CBP review and issue holds before cargo, or a container is loaded onto the vessel. This facilitates a more efficient export process by reducing the likelihood of identifying cargo after it has been loaded or departed from the United States which results in significant return or discharge costs and potentially results in delays or disruptions to the vessel's export.

Additionally, CBP is able to use ATS to conduct risk assessment while reviewing more export manifest data than what is reviewed under the baseline scenario.

In the initial phase of the test, CBP asked trade members that agreed to participate in the vessel EEM test to provide information electronically to CBP via ACE for a total of 27 mandatory and conditional data elements 24 hours prior to the cargo being loaded onto vessels. CBP determined that the selected data elements would provide CBP the information necessary to conduct proper cargo safety and security enforcement.

Outbound vessel carriers were already providing these data elements to CBP prior to the test but in most cases they were submitted through various paper forms, usually post departure. The data elements selected by CBP during this initial phase of the vessel EEM test

consisted of the following (all data elements are mandatory unless otherwise noted):

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)
- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No)
- (23) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final. etc.) (conditional)
- (24) Hazmat Indicator (Yes/No)
- (25) UN Number (conditional)²⁰
- (26) Chemical Abstract Service (CAS) Registry Number (conditional)
- (27) Vehicle Identification Number or Product Identification Number (conditional)²¹

After an initial two-year period, CBP determined that in the initial phase of the vessel EEM test it had been feasible and functional for participating parties to provide export manifest data electronically to CBP. CBP extended the vessel EEM test and expanded the test making it available to all outbound vessel carriers and other associated parties (beyond the initial nine-party limit) meeting eligibility criteria so that CBP could continue evaluating the feasibility and functionality of requesting electronic vessel export manifest data prior to cargo being loaded.²² After the first two years of the

²⁰ If the hazmat indicator is yes, the four-digit United Nations (UN) Number assigned to the hazardous material must be provided.

²¹ For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.

²² Limited to those parties able to electronically transmit manifest data in the identified acceptable format. Prospective ACE Export Manifest for Vessel

vessel EEM test, CBP consulted with the Commercial Customs Operations Advisory Committee (COAC) and it was determined that outbound vessel carriers and NVOCCs may not have access to certain export manifest data elements requested by CBP 24 hours prior to loading of cargo onto a vessel. Therefore, CBP modified the filing condition for four of the export manifest data elements for the vessel EEM test from mandatory to optional.

At the start of the vessel EEM test extension, CBP separated export manifest data elements into three categories—mandatory, conditional, and optional data—and requested that participants provide export manifest data for all cargo at least 24 hours prior to loading of the cargo. CBP also requested that the following data elements be provided electronically via ACE for all cargo preparing for departure from the United States in the sea environment. Unless otherwise noted, data elements are mandatory.

- (1) Mode of transportation (containerized vessel cargo or non-containerized vessel cargo)
- (2) Name of ship or vessel
- (3) Nationality of ship
- (4) Name of master (optional)
- (5) Port of loading
- (6) Port of discharge
- (7) Bill of Lading number (Master and House)
- (8) Bill of Lading type (Master, House, Simple or Sub)
- (9) Number of house Bills of Lading (optional)
- (10) Marks and Numbers (conditional)
- (11) Container Numbers (conditional)
- (12) Seal Numbers (conditional)
- (13) Number and kind of packages
- (14) Description of goods
- (15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
- (16) Shipper name and address
- (17) Consignee name and address
- (18) Notify Party name and address (conditional)
- (19) Country of Ultimate Destination
- (20) In-bond number (conditional)
- (21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
- (22) Split Shipment Indicator (Yes/No) (optional)

Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message via Ocean CAMIR, ANSI X12, or Unified XML and must successfully complete certification testing with their client representative. Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

(23) Portion of split shipment (e.g., 1 of 10, 4 of 10, 5 of 10—Final, etc.) (optional)

(24) Hazmat Indicator (Yes/No)

(25) UN Number (conditional)²³

(26) Chemical Abstract Service (CAS) Registry Number (conditional)

(27) Vehicle Identification Number or Product Identification Number (conditional)²⁴

CBP has continuously extended the vessel EEM test to gauge the functionality and feasibility of implementing the requirement of providing EEM data to CBP prior to a vessel's departure. CBP believes that the vessel EEM test has been successful and CBP is proposing to make the electronic transmission of pre-departure export manifest data mandatory for all cargo departing the United States in the sea environment.

The Vessel EEM Regulatory Program

This proposed rule would require the transmission of EEM data for all cargo prior to loading onto vessels departing the United States and require that outbound vessel carriers or their agents present data related to the CBP Form 1300 no later than two hours prior to departure of the vessel from the United States. This proposed rule would also eliminate the use of the paper CBP Form 1302A, encourage the transition to electronic equivalent of the paper CBP Form 1300 for vessel clearance and prohibit the providing of vessel export manifest data post departure. CBP has been testing the electronic transmission process for vessel export manifest data by conducting the vessel EEM test since 2015 and CBP anticipates that requiring the transmission of EEM data prior to loading of cargo onto a vessel would improve CBP's ability to conduct proper cargo security enforcement and prevent smuggling while minimizing the disruption to the flow of goods during the export process in the sea environment. This proposed rule would use ACE to obtain the data, conduct risk assessment, screen EEM data for cargo being loaded onto vessels preparing to depart the United States, and allow for the trade member which most likely has the direct information on cargo to provide the export manifest data to CBP.

In the initial vessel EEM test, CBP requested export manifest information

for 27 data elements 24 hours prior to the loading of cargo or container onto the vessel. The experience CBP gained during the test helped revise deadlines for when participants should transmit data and which data elements should be mandatory, conditional, optional, and unnecessary. Of the original data elements put forth in the initial vessel EEM test CBP renamed or reconfigured twelve of these initial data elements in this proposed rule.²⁵ CBP determined that the following data elements in the vessel EEM test were not necessary and CBP did not include these vessel export manifest data elements in the vessel EEM. CBP lists the data elements below along with their original data element number during the vessel EEM test in parentheses.

- Name of master (optional) (4)
- Split Shipment Indicator (Yes/No) (22)
- Portion of split shipment (i.e., 1 of 4, 4 of 10, 5 of 10—Final, etc.) (23)
- Product Identification Number (noting that Vehicle Identification Number has been included) (27)

Based on the experience CBP obtained from the vessel EEM test, in this proposed rule CBP is adjusting the data elements and deadlines for transmission. For this proposed rule, CBP grouped the vessel EEM data elements based on the deadlines for submission of data and which trade member likely has the correct information to provide to the export manifest data element. As discussed earlier, CBP expanded the vessel EEM test to any eligible party in 2017, and in this proposed rule CBP anticipates that any party with direct knowledge of the export data element can participate in the program and provide export manifest data to CBP via ACE prior to loading cargo onto the vessel. This proposed rule would allow outbound vessel carriers, or their agents, USPPIs, FPPIs, customs brokers, ABI filers, NVOCCs, freight forwarders, or any other party with direct knowledge of the export manifest data element to provide

²⁵ CBP will also introduce new data elements. 'Estimated Scheduled Departure Time and Departure Port' will be added as a mandatory data element in the initial filing. The data element 'Departure Date' is added as a mandatory data element for transportation data. 'Vessel carrier SCAC code' and 'Place Carrier Took Possession of Merchandise or Empty Container' were two more data elements CBP introduced as mandatory in transportation data. CBP also introduced the 'Mexican Pedimento' data element for cargo exports to Mexico as a conditional cargo data. Additionally, CBP added 'Additional Party Details' as a cargo data element. CBP also introduced 'Secondary Notify Party SCAC' data element as an optional cargo data element. CBP discusses the difference between initial filing, transportation and cargo data in more detail later in this section of the analysis.

²³ If the hazmat indicator is yes, then UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.

²⁴ For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.

specific pre-departure export manifest data to CBP using CBP's ACE as a data transmission tool. This proposed rule also mandates that the party transmitting any specific export manifest data must hold or obtain a qualifying bond.²⁶ Additionally, any party that transmits data elements electronically to CBP for vessel EEM is responsible for addressing and responding to any questions, issues, instructions or holds that arise during CBP review of that specific data.

To improve CBP's risk assessment and screening efforts using pre-departure export manifest data, this proposed rule would require an initial filing of eight mandatory data elements, which must be transmitted to CBP by any eligible party as early as practicable but no later than 24 hours prior to loading cargo on the outbound conveyances attempting to depart from the U.S. port of export. Unlike in the vessel EEM test where CBP requested all 27 data elements to be transmitted 24 hours prior to the cargo being loaded, in this proposed rule CBP identified just eight data elements critical to CBP in conducting preliminary risk assessment and screening efforts. These would be transmitted by any eligible party as early as practicable but no later than 24 hours prior to the cargo being loaded on the outbound conveyance departing the United States. CBP refers to these mandatory eight data elements as the initial filing. All other vessel export manifest data elements, including data on empty containers, should be transmitted to CBP no later than two hours prior to loading of cargo onto a vessel preparing to depart the United States.

CBP acknowledges that for most outbound vessel carriers the position of these time containing the provisions found in 113.63 of this chapter, or an International Carrier Bond containing the provisions found in section 113.64 of this chapter. Requirements for transmitting export manifest data are a significant change compared to the baseline where for the majority of export cargo and containers outbound vessel carriers were providing the completed export manifest data four or more days post departure.

These deadlines could impose additional time burdens and costs to outbound vessel carriers and other trade

members to provide the appropriate export information earlier in the export process compared to the baseline. CBP notes that although most export manifest data is submitted post departure, CBP does require complete export manifest data prior to departure depending on the country to which the cargo is being shipped. Additionally, a number of countries have their own import manifest data requirements enforcing import manifest data to be submitted 24 hours prior to a vessel departing a U.S. port of export to a foreign port. These import manifest data elements are similar to the export manifest data elements. Therefore, most vessel departures exporting goods from the United States require either import manifest data or complete export manifest data prior to departure.

Additionally, outbound vessel carriers and other parties transmitting export manifest data can provide data and information on a flow basis whenever it becomes available to help facilitate CBP's review of the export data and the overall export process. CBP anticipates that these deadlines would provide CBP adequate time to perform proper risk assessment and identify cargo and containers for examination prior to loading of cargo and containers onto vessels. CBP expects this would enhance security measures while minimizing the disruption to the flow of goods during the export process and reduce the number of requests for return and discharges of high-risk cargo and containers. Upon transmission of the initial filing, CBP would validate or notify the responsible trade member of any holds or DNLs. The trade member that transmits the data would be responsible for providing answers and updates on the data or information to CBP but the ultimate responsibility to load, hold, or not load merchandise falls on the outbound vessel carrier.

For the mandatory initial filing required as early as practicable but no later than 24 hours prior to cargo loading onto vessels, CBP selected seven data elements from the vessel EEM test and added one new data element, Estimated Scheduled Departure Date and Departure Port. Additionally, six of the initial filing data elements had their descriptions revised in this proposed rule to provide additional clarity on the data required. The initial filing data elements required in this proposed rule include the following:

- (1) Bill of Lading number;
- (2) The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers

and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(3) Total Weight of cargo expressed in pounds or kilograms;

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTSUS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ["freight of all kinds"], "general cargo," "bulk cargo" and "STC" ["said to contain"] are not acceptable);

(5) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment);

(6) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo would be delivered in the foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify Party" field.);

(7) The estimated scheduled departure date and departure port; and

(8) AES Exemption Statement (per shipment).

In this proposed rule, CBP groups the remaining vessel EEM data elements based on CBP's understanding of which trade member may have the most direct knowledge of the export manifest data element. CBP categorized these remaining data elements as export manifest transportation data, export manifest cargo data, and empty container data.²⁷ According to this proposed rule, the outbound vessel carrier or its agent would be responsible for transmitting to CBP the data and information on any empty container data and export manifest transportation data. Outbound vessel carriers or agents must transmit these data elements electronically to CBP no later than two hours prior to the loading of the cargo or container onto the vessel. The outbound vessel carrier or its agent would also be responsible for providing the vessel clearance statement CBP Form 1300 or its electronic equivalent to CBP two hours prior to a vessel's departure from the United States. The

²⁶ CBP acknowledges that any of the following bonds would be appropriate, CBP Basic Importation and Entry Bond containing the provisions found in section 113.62 of this chapter, a Basic Custodial Bond containing the provisions found in 113.63 of this chapter, or an International Carrier Bond containing the provisions found in section 113.64 of this chapter.

²⁷ CBP would continue to require; CBP Form 1300 be submitted before a vessel can be cleared for departure from the United States, these data elements for the CBP Form 1300 are not affected by this proposed rule, but this proposed rule would authorize the use of CBP Form 1300 electronic equivalent.

following list of data elements displays CBP's proposed mandatory and conditional export manifest transportation data elements:

Mandatory Elements

- (1) Mode of transportation data (containerized vessel cargo or non-containerized vessel cargo)
- (2) Vessel Country Code International Organization for Standardization (ISO)
- (3) Vessel Name
- (4) Voyage Number
- (5) Port of Departure
- (6) Port of Unlading
- (7) Date of Departure
- (8) Bill of Lading (Master, House or Simple)
- (9) Vessel Code (International Maritime Organization (IMO))
- (10) The vessel carrier identification SCAC code ²⁸
- (11) Container information
- (12) Load Status (Empty or Loaded)
- (13) Place carrier took possession of merchandise or empty container

Conditional Elements

- (1) Seal number(s) ²⁹

Optional Elements

- (1) Marks and Numbers
- (2) Number of house Bills of Lading
- (3) Country of Ultimate Destination

²⁸ The unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes; see § 4.7a(c)(2)(iii) of this chapter.

²⁹ The seal numbers must be provided for all seals affixed to containers to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

CBP provides additional flexibility in this proposed rule by allowing any eligible party with the most direct information to provide export manifest cargo data electronically to CBP two hours prior to loading that cargo or container onto a vessel preparing to depart the United States. Any other trade member (USPPIs, FPPIs, customs brokers, ABI filer, NVOCCs, freight forwarders or any other party with direct knowledge of the export data element) transmitting export manifest cargo data must be in possession of a bond to provide the export manifest cargo data and information to CBP.

However, the outbound vessel carrier or its agent may also elect to transmit the mandatory manifest cargo data and in the case that no other party elects to provide the required manifest cargo data, it is the outbound vessel carrier's responsibility to provide this manifest cargo data to CBP. The following data elements comprise the CBP requested export manifest cargo data for vessel EEM in this proposed rule. CBP notes that if the data was already provided during the initial filing it does not need to be transmitted again unless there were updates or changes made to the data.

Mandatory Elements

- (1) Shipper name and address ³⁰
- (2) Consignee name and address ³¹
- (3) Port of lading
- (4) Bill of Lading numbers
- (5) Bill of Lading type (Master, House, or Simple)
- (6) Cargo description

³⁰ For empty containers, the shipper may be the carrier from whom the outbound vessel carrier received the empty container to transport.

³¹ For empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container.

- (7) Hazardous Materials

Conditional Elements

- (1) In-bond number and type or in-bond house bill number
- (2) Mexican Pedimento (only for cargo exported to Mexico)
- (3) Notify Party name and address
- (4) Chemical Abstract Service (CAS) Registry Number
- (5) Additional Party Details
- (6) 6-character Hazmat Code ³²

Optional Elements

- (1) Secondary Notify Party SCAC
- (2) Vehicle Identification Number (VIN)

CBP provides a mapping and comparison of the vessel EEM test data elements and the data elements for the vessel EEM in Table 2 below. There were four data elements that were not carried forward from the test:

- (1) Name of master
- (2) Number and kind of packages
- (3) Split shipment indicator (optional)
- (4) Portion of split shipment

There will also be six new data elements introduced in the vessel EEM that do not map back to the test data elements:

- (1) Voyage Number
- (2) Mexican Pedimento
- (3) Additional Party Details (conditional)
- (4) Secondary Notify Party SCAC (optional)
- (5) Place carrier took possession of merchandise or empty container
- (6) Date of Departure

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³² Including the UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided.

Table 2. Vessel EEM Test and NPRM Data Element Comparison

Vessel EEM Test Elements (as revised in 2017)	Vessel EEM Data Elements
Mode of transportation	Mode of transportation data
Name of ship or vessel	Vessel Name
	Vessel Code (IMO)
	The vessel carrier identification SCAC code
Nationality of ship	Vessel Country Code (ISO)
Name of master	
Port of loading	Port of lading
	Estimated scheduled departure date and departure port*
	Port of Departure
Port of discharge	Port of Unlading
Bill of Lading number	Bill of Lading number*
Bill of Lading type	Bill of Lading
Number of house Bills of Lading (optional)	Number of house Bills of Lading (optional)
Marks and Numbers (conditional)	Marks and Numbers (optional)
Container Numbers (conditional)	Container information
	Load Status (Empty or Loaded)
Seal Numbers (conditional)	Seal Numbers (conditional)
Number and kind of packages	
Description of goods	Precise description of cargo or HTSUS number*
Gross Weight or Measurements	Total Weight of Cargo*
Shipper name and address	Shipper's name and address or ID number*
Consignee name and address	Complete name and address of consignee or ID number*
Notify Party name and address (conditional)	Notify Party name and address (conditional)
Country of Ultimate Destination	Country of Ultimate Destination (optional)
In-bond number (conditional)	In-bond number and type (conditional)
ITN or AES Exemption Statement	AES Exemption Statement*
Split Shipment Indicator (optional)	
Portion of split shipment (optional)	
Hazmat Indicator	Hazardous Materials
	6-character Hazmat Code
UN Number (conditional)	
CAS Registry Number (conditional)	CAS Registry Number (conditional)
VIN or Product Identification Number (conditional)	VIN (optional)
	Voyage Number
	Mexican Pedimento (only for cargo exported to Mexico) (conditional)
	Additional Party Details (conditional)
	Secondary Notify Party SCAC (optional)
	Place carrier took possession of merchandise or empty container
	Date of Departure

* Vessel EEM initial filing data elements requested as early as practicable but no later than 24 hours prior to cargo being loaded onto vessels.

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Once the outbound vessel carrier or other trade member electronically transmits the export manifest empty container, transportation, and cargo data

to CBP via ACE, CBP would validate, or if necessary, notify the responsible party of any holds.

Transmitting this data electronically would allow CBP to use its ATS for all

exported cargo in the sea environment and the integrated system would conduct the majority of risk assessment, screening, and review of the data limiting the time burden to CBP officers

to conduct manual review of such data. The responsible party must then work with CBP to provide the appropriate information, address issues, or answer questions to release any holds. Until the hold(s) are released, that cargo cannot be loaded onto the vessel. CBP anticipates that when export manifest data is provided within the required deadlines of this proposed rule there should be very few if any instances where CBP issues a hold after cargo is loaded onto the vessel. However, if a hold is issued after loading the cargo or container onto the vessel, the outbound vessel may not depart or transport that cargo or container until the responsible party resolves all holds or that cargo is unloaded from the vessel.

CBP officers would manually review all export manifest data transmissions for which 1H Enforcement holds are issued and CBP officers would conduct cargo examinations where necessary prior to loading the cargo or container onto the vessel. CBP anticipates that obtaining this export manifest data through the integrated system would help CBP work with outbound vessel carriers and other parties to address almost all outstanding issues resulting from CBP review before loading the cargo onto a vessel attempting to depart the United States. This would significantly reduce the instances where issues would be addressed after the cargo is loaded onto the vessel and would minimize requests for cargo returns or discharges at second U.S. ports and any other potential delays resulting from a CBP officer's examination of cargo in those scenarios.

As an enforcement tool, this proposed rule provides CBP with authority to impose penalties and/or claims for liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. CBP retains the enforcement discretion to assess penalties and/or claims for liquidated damages when a violation occurs. Any party that violates the requirements for data transmission as described above in this proposed rule is subject to pay liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure. Although there is the possibility for monetary enforcement action, compliance is CBP's goal and CBP aspires to work alongside outbound vessel carriers and other trade members to ensure that trade members provide the proper data in a timely manner, so that CBP can properly review the data, conduct risk assessment to identify high-risk shipments, and enforce U.S.

export laws and regulations on U.S. exports in the sea environment.³³

Time Periods of Analysis

This analysis primarily focuses on the potential outcomes of this proposed rule after it would be in effect, but it also includes a discussion of the impacts during the vessel EEM test program that were in place before the proposed rule. The costs, cost savings, and benefits of this vessel EEM test are sunk (already incurred and cannot be recovered) for the purposes of deciding whether to proceed with the proposed rule, but they are important for understanding the full costs and benefits of implementing CBP's vessel EEM program as a whole. To give the reader a full view of the effects of implementation of CBP's vessel EEM program through the entire span of time, CBP analyzes the effects of implementing vessel EEM collection over two time periods, comparing each time period to the baseline scenario that existed prior to the vessel EEM test. First, CBP analyzes the effects from the vessel EEM test used for the collection of pre-departure manifest data on sea exports during the pilot period, fiscal years 2015–2025.³⁴ Second, CBP analyzes the effects of the proposed rule mandating the transmission of EEM data in the sea environment during the five-year regulatory period, beginning in fiscal year 2026 and ending in fiscal year 2030. For the regulatory period, CBP estimates, to the extent data is available, the total projected costs, cost savings and benefits to the Federal government, outbound vessel carriers and other trade members as a result of requiring the transmission of vessel EEM data for vessels departing the United States, compared to the baseline scenario. In the analysis for this proposed rule, CBP defines the pilot period as fiscal years 2015–2025 and the regulatory period as fiscal years 2026–2030. Additionally, all references to years are for fiscal years unless otherwise noted.

³³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 21, 2022. For EEM programs, while there is a possibility of penalties when a violation occurs, compliance is the goal and CBP will use flexible enforcement to encourage compliance while giving sufficient time for industry partners to acclimate to the new process.

³⁴ CBP anticipates that the test would still be active until fiscal year 2026 when the proposed rule would be finalized; however, at the time this analysis was written CBP only had actual data up through fiscal year 2023. Therefore, CBP provides estimates, not actual data, for the fiscal years 2024 and 2025 in this analysis.

Population Affected by the Proposed Rule

CBP expects that this proposed rule would affect a number of different parties. Because the vessel EEM test was limited in scope, CBP anticipates that effects were largely experienced by a few outbound vessel carriers and CBP during the pilot period. Additionally, CBP notes that although the initial vessel EEM test was made available to no more than a total of nine outbound vessel carriers and other trade members and during the test extension CBP removed the participant limitations as the test was extended to all eligible parties, in 2022 only two outbound vessel carriers actively participated in the vessel EEM test. However, by the end of 2023 there were 15 outbound vessel carriers actively or intermittently participating in the vessel EEM test. As the vessel EEM program expands during the regulatory period, CBP expects the expansion to have broader effects to all outbound vessel carriers, some other trade members (such as USPPIs, FPPIs, customs brokers, ABI filer, NVOCCs, freight forwarders or any other party with direct knowledge of the export data elements), CBP, and other government agencies that oversee U.S. exports in the sea environment. CBP expects that this proposed rule would affect all outbound vessel carrier companies currently participating in exporting cargo from the United States in the sea environment.³⁵ This proposed rule could result in effects to a large number of other trade members specifically in the case they elect to provide electronic manifest cargo data directly to CBP via ACE. CBP estimates that approximately 455 other trade members would elect to provide vessel EEM data directly to CBP as a result of this proposed rule.³⁶ CBP expects that this proposed rule would also improve the facilitation of the export process at all U.S. seaports currently conducting the exportation of goods from the United States and would improve communication between CBP and trade members and CBP and other government agencies that oversee the enforcement of U.S. export laws and regulations.

³⁵ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 13, 2023.

³⁶ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 13, 2023. CBP expects there will be approximately 500 trade members that will directly participate in vessel EEM. CBP used internal data to identify approximately 45 outbound vessel carrier companies that will participate which suggests around 455 other trade members would directly participate in vessel EEM.

Vessel EEM Test Data and Vessel Export Projections

CBP was able to identify the actual number of electronic export manifest data transmissions by participating outbound vessel carriers during the test from 2016–2023.³⁷ During that time frame, vessel EEM test participants provided a total of 2,768,815 export manifest data transmissions representing approximately 6.7 percent of all estimated export manifest data submissions.³⁸ Because CBP’s pilot period includes future years, CBP does not have actual test data available for 2024 and 2025. To address this issue CBP provides estimates for the final two years of the pilot period. To estimate the number of vessel EEM test data transmissions that would occur in 2024 and 2025 CBP assumes that the number of transmissions would stay relatively the same as in 2023.³⁹ Therefore, CBP expects that in both 2024 and 2025 there would be approximately 749,113 test data transmissions.

In 2022, there were only two active outbound vessel carriers participating in the vessel EEM test. CBP notes that prior to the vessel EEM test both participants provided export manifest data to CBP

electronically using VTM. However, by the end of 2023 the number of vessel EEM test participants increased to 15 outbound vessel carriers and none of these new participants was providing data using VTM prior to this test. Because CBP expects there would be different effects on vessel EEM test participants based on how they provided data to CBP during the baseline scenario (paper CBP Form 1302A or VTM), CBP includes data during the pilot period on VTM data transmissions and estimates how many vessel EEM data transmissions were conducted by prior VTM participants. CBP identified the actual number of VTM data transmissions submitted to CBP from 2016–2023 was around 3,806,162.⁴⁰ To estimate the number of VTM data transmissions that would occur in 2024 and 2025, CBP assumes that the number of transmissions would stay relatively the same as in 2023. Therefore, CBP expects that in both 2024 and 2025 there would be approximately 188,811 data transmissions.⁴¹

Because there were only two outbound vessel carriers participating in the vessel EEM test until 2023, and both

of the participants were prior VTM participants, CBP assumes that all vessel EEM test data transmissions prior to 2023 were made by VTM participants. For the year 2023, CBP obtained data showing that the two initial vessel EEM test participants conducted around 527,938 vessel EEM test data transmissions.⁴² CBP assumes these two participants will submit the same number of vessel EEM test data transmissions in 2024 and 2025 and all other vessel EEM test transmissions will be submitted by non-VTM participants. CBP estimates that during the entire pilot period there will be approximately 4.2 million vessel EEM test data transmissions, where 3.6 million test data transmissions will be made by VTM participants and 0.6 million will be submitted by non-VTM participants. Table 3 below displays actual number of vessel EEM test, VTM data transmissions, the expected number of vessel EEM test transmissions made by VTM participants, and the expected number of transmissions made by non-VTM participants from 2016–2023, and the estimated numbers for 2024 and 2025.

Table 3. Vessel EEM Test and VTM Test Data and Pilot Period Estimates

Year	EEM Test Data Transmissions	VTM Data Transmissions	Transmissions By VTM Participants	Transmissions by non-VTM Participants
2015				
2016	207,437	597,288	207,437	
2017	284,152	631,862	284,152	
2018	332,291	666,666	332,291	
2019	318,440	461,548	318,440	
2020	323,069	416,683	323,069	
2021	265,424	460,056	265,424	
2022	288,889	383,248	288,889	
2023	749,113	188,811	527,938	221,175
2024*	749,113	188,811	527,938	221,175
2025*	749,113	188,811	527,938	221,175
Total	4,267,041	4,183,784	3,603,516	663,525

*Pilot period years with estimated not actual values

³⁷ Pilot period vessel EEM data transmission information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022 and December 20, 2023. Data obtained from CBP’s ACE.

³⁸ CBP estimated the number of total export manifest data submissions from 2016–2023 by assuming one CBP Form 1302A represents one export manifest data transmission. Additionally, CBP assumes that the total number of export manifest data submissions include the estimated number of outbound non-empty containers (CBP

assumes one CBP Form 1302A per non-empty container), other vessel departures (CBP assumes one CBP Form 1302A per other vessel departure).

³⁹ In 2023 CBP received 749,113 vessel EEM test data transmissions, data obtained by CBP’s Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 20, 2023. Data obtained from CBP’s ACE.

⁴⁰ Data provided by CBP’s Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022 and December 20, 2023. Data obtained from CBP’s ACE.

⁴¹ CBP notes that as of 2023 there was only one outbound vessel carrier actively participating in providing export manifest data to CBP via VTM; CBP assumes that this carrier will continue to participate in VTM in 2024 and 2025 and CBP uses the number of transmissions in 2023 (118,811) as an estimate for future years in the pilot period.

⁴² Data provided by CBP’s Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 20, 2023. Data obtained from CBP’s ACE.

Outside of the limited vessel EEM test and VTM data provided by participants, all other export manifest data (excluding data for EEI requirements) submitted by outbound vessel carriers are on paper forms. CBP assumes that the number of future EEM data transmissions would be equal to the number of CBP Form 1302As that would be submitted absent this proposed rule. Unfortunately, CBP does not track the number of CBP Form 1302As that are submitted annually. Therefore, it was not feasible for CBP to provide an exact count for how many CBP Form 1302As (and in turn electronic export manifest data transmissions) would be submitted once this rule is implemented. To estimate the number of export manifest data transmissions that would be submitted during the regulatory period, CBP used data from the United States Army Corps of Engineers Waterborne Commerce Statistics Center (WCSC). The WCSC publishes data on total foreign vessel departures by vessel type and total outbound non-empty container traffic exported out of the United States.⁴³ WCSC provides vessel departure numbers for different categories of vessels that actively engage in exporting goods and cargo out of the United States, including self-propelled dry bulk cargo vessels (including container vessels), tankers, dry cargo barges, liquid barges, towboats and cranes (other vessels).

⁴³ United States Army Corps of Engineers Waterborne Commerce Statistics Center Waterborne Commerce Reports, 'U.S. Waterborne Container Traffic by Port/Waterway in 2022' <https://usace.contentdm.oclc.org/digital/collection/p16021coll2/id/1445> and 'Waterborne Cargo and Trips Data Files 2022' <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll2/id/14579>. Accessed July 2024. WCSC provides export non-empty container volume based in twenty-foot equivalent units (TEUs). TEUs is a unit of measurement used to determine cargo capacity for container ships and terminals and is the standard form of measurement for containers carried by container ships.

Unfortunately, the most recent data available from WCSC on outbound container traffic and vessel departures is for 2022.⁴⁴ Therefore, CBP provides estimates for the number of vessel departures for 2023, 2024 and 2025. CBP does not expect every vessel departure would require a paper CBP Form 1302A in the baseline scenario. CBP anticipates the only vessel categories provided by WCSC that would require the submission of a CBP Form 1302A (or EEM data transmission in the regulatory period) would be the self-propelled dry cargo vessels, tankers, dry cargo barges and liquid barges.^{45 46}

According to WCSC, from 2016–2022 there were a total of 400,954 self-propelled dry cargo vessel departures to a foreign country or on average 57,279 annually. To estimate the number of self-propelled dry cargo vessel departures in 2023, 2024 and 2025, CBP multiplied the CAGR for these types of vessels from 2016–2020 (1.31%) by the previous year's total estimated departures.⁴⁷ According to CBP's estimates from 2016–2025 there will be approximately 621,350 self-propelled dry cargo vessel departures or on

⁴⁴ CBP used WCSC data from 2016–2022. CBP did not obtain WCSC data for 2015 because vessel EEM test participation did not start until 2016 despite the pilot period starting in 2015 because of CBP IT development costs.

⁴⁵ CBP assumes that vessel departures for categories of towboats and cranes (other vessels) are typically not carrying cargo and would not require the submission of a CBP Form 1302A and therefore are excluded from the estimate for the number of future vessel EEM data transmissions.

⁴⁶ For the remainder of this analysis CBP groups the following vessel categories (tankers, dry cargo barges and liquid barges) and refers to them as 'other vessels'.

⁴⁷ CBP excluded departures in 2021 and 2022 from the CAGR calculation because there were significant increases resulting from the COVID–19 pandemic and CBP expects the change in departures for these vessels to return to the slower growth seen before 2021.

average 62,135 departures annually. According to WCSC data, from 2016–2022 there were a total of 139,882 other vessel departures or on average 19,983 annually. CBP used the CAGR for other vessel departures from 2016–2022 (5.66%) to project the number of other vessel departures in 2023, 2024, and 2025.⁴⁸ CBP estimates that from 2016–2025 there will be around 224,318 other vessel departures or on average 22,432 departures annually.

During the regulatory period CBP assumes that vessel departures should continue to increase at relatively the same rate in future years as estimated during the final three years of the pilot period. Therefore, to estimate the number of self-propelled dry cargo vessel departures and other vessel departures in the regulatory period CBP used the same CAGR for each vessel category (1.31% for self-propelled dry cargo, and 5.66% for other vessels) that was used for pilot period years 2023–2025. According to CBP's estimates during the regulatory period there would be around 386,930 self-propelled dry cargo vessel departures or on average 77,386 annually. Additionally, CBP expects there would be around 175,741 other vessel departures or on average 35,148 annually. Table 4 below displays WCSC data for total vessel departures (less towboats and cranes), self-propelled dry cargo vessels and other vessels from 2016–2022 and CBP's estimates for these types of vessel departures for the final three years of the pilot period and during the five-year regulatory period.

⁴⁸ CBP excluded the departures in 2021 and 2022 from the CAGR calculation because there was a significant increase resulting from the COVID–19 pandemic in 2021 which CBP anticipates may have also skewed the 2022 departure numbers. CBP expects the change in departures for other vessels to return to the slower growth seen before 2021.

Table 4. Estimated Vessel Departures Carrying Cargo in the Sea Environment 2016-2030

	Total Vessel Departures	Self -Propelled Dry Cargo Vessel Departure	Percent Change	CAGR 2016-2020	Other Vessel Departures	Percent Change	CAGR 2016-2020
Pilot Period							
2016	68190	52018			16172		
2017	68565	51322	-1.34%		17243	6.62%	
2018	69237	51515	0.38%		17722	2.78%	
2019	74411	55602	7.93%		18809	6.13%	
2020	74943	54788	-1.46%	1.31%	20155	7.16%	5.66%
2021	88724	64129	17.05%		24595	22.03%	
2022	96766	71580	11.62%		25186	2.40%	
2023*	99,126	72,514			26,611		
2024*	101,578	73,461			28,117		
2025*	104,128	74,420			29,708		
Total	845,668	621,350			224,318		
Regulatory Period							
	Total Vessel Departures	Self -Propelled Dry Cargo Vessel Departures			Other Vessel Departures		
2026	106,781	75,392			31,389		
2027	109,541	76,376			33,165		
2028	112,415	77,373			35,042		
2029	115,408	78,383			37,025		
2030	118,526	79,406			39,120		
Total	562,671	386,930			175,741		

* Pilot period years with estimated not actual values

For this analysis CBP assumes that other vessels departures would only require a single CBP Form 1302A and therefore CBP assumes that every single other vessel departure would require a single export manifest data transmission in the regulatory period.^{49 50} However, CBP does not know how many CBP Form 1302As and in turn export manifest data transmissions would be submitted for each self-propelled dry cargo vessel departure. Some of the vessels within this category are container vessels which can carry a very large number of containers. Additionally, each container could potentially require the submission of

one or many CBP Form 1302As. To estimate how many CBP Form 1302As are submitted by these vessels, CBP obtained data on outbound non-empty container traffic from WCSC from 2016–2022.⁵¹ CBP assumes that for every outbound non-empty container, outbound vessel carriers would provide one export data submission and every export manifest transmission received during the vessel EEM test represents one non-empty container.⁵² CBP used previous year data from WCSC to

estimate the number of non-empty containers departing the United States in future years. CBP estimates that the CAGR of non-empty containers between 2016–2019 was approximately 1.56%.⁵³ CBP multiplied this CAGR by the number of non-empty containers that departed the United States in 2022 to estimate the number of non-empty containers that would depart in 2023. CBP used the CAGR to estimate the number of non-empty containers for each additional future year using the CAGR and the estimate in the prior year for the number of non-empty containers. According to CBP's estimates during the regulatory period there would be around 60 million non-empty containers departing the United States in the sea environment or on average 12 million annually. Table 5 displays the actual number of non-empty containers from

⁴⁹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on May 17, 2023.

⁵⁰ Other vessels can carry a variety of goods and cargo, however when compared to container vessels the quantity of different products is typically much smaller, considering each container could have hundreds of different types of goods and cargo. CBP expects that the number of different products on other vessels is fewer than container vessels and, in most cases, it is likely that all cargo on other vessels could be entered onto a single CBP Form 1302A. To account for the difference CBP makes the assumption that each container represents one CBP Form 1302A and every other vessel departure represents one CBP Form 1302A.

⁵¹ CBP used WCSC data from 2016–2022. CBP did not obtain WCSC data for 2015 because vessel EEM test participation did not start until 2016 despite the pilot period starting in 2015 because of CBP IT development costs.

⁵² Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on May 17, 2023. CBP assumes on average there would be one CBP Form 1302A per non-empty container. CBP acknowledges that one non-empty container could require multiple CBP Form 1302As depending on the content inside the container and it is possible for one CBP Form 1302A to represent more than one container. Additionally, CBP Form 1302A must be submitted at every U.S. port of export that the vessel departs. For the matter of simplicity CBP assumes that one export manifest data transmission represents one non-empty cargo container and likewise one CBP Form 1302A.

⁵³ CBP excluded data from years 2020–2022 in the CAGR calculation for the number of future non-empty containers because CBP believes including these years would introduce a downward bias on future year estimates. CBP expects that the number of non-empty containers departing the United States should continue to increase gradually in future years and therefore believes that the CAGR from 2016–2019 is a better estimate.

2016–2022 obtained from WCSC and CBP’s estimates for the number of non-empty containers for years 2023–2030.

CBP’s estimates for the number of non-empty containers for years 2023–2030.

Table 5. Estimated Non-Empty Cargo Containers Departing the United States in the Sea Environment 2016-2030

	Non-Empty Containers	Percent Change	CAGR 2016-2019
Pilot Period			
2016	11,875,482		
2017	12,031,354	1.31%	
2018	12,291,082	2.16%	
2019	12,440,388	1.21%	1.561%
2020	11,456,383	-7.91%	
2021	11,463,780	0.06%	
2022	10,940,680	-4.56%	
2023*	11,111,479		
2024*	11,284,944		
2025*	11,461,118		
Total	116,356,689		
Regulatory Period			
2026	11,640,042		
2027	11,821,759		
2028	12,006,313		
2029	12,193,748		
2030	12,384,109		
Total	60,045,970		

* Pilot period years with estimated not actual values

To estimate the number of vessel EEM data transmissions that would be submitted during the regulatory period, CBP added the estimated number of non-empty containers departing the United States each year (Table 4) and the estimated number of other vessel departures (Table 3). According to CBP’s estimates, during the regulatory period outbound vessel carriers and other trade members would transmit around 60 million vessel EEM data transmissions or on average 12 million annually. During the baseline scenario CBP already had participants in the VTM and those participants did not submit paper CBP Form 1302As. CBP estimates that the number of paper CBP Form 1302As submitted during the pilot period by subtracting the number of VTM data transmissions and vessel EEM test data transmissions submitted by VTM participants (see Table 3) from the number of non-empty containers and other vessel departures during each year. During the pilot period CBP expects that outbound vessel carriers

will submit around 108 million paper CBP Form 1302As, or on average 10.8 million annually.

CBP assumes that during the regulatory period VTM data transmissions and vessel EEM data transmissions by VTM participants would remain relatively constant to the numbers provided in 2023 (see Table 3). Because this proposed rule would require that all outbound vessel carriers provide EEM data, there would not be any VTM data transmissions during the regulatory period. CBP includes the annual VTM data transmissions from 2023–2025 (188,881) in the number of vessel EEM data transmissions by VTM participants. CBP expects that absent this proposed rule outbound vessel carriers would provide 3.5 million VTM transmissions to CBP during the regulatory period or on average 716,749 annually. Because VTM participants do not submit paper CBP Form 1302As, CBP adjusted the total number of vessel EEM data transmissions in the regulatory period to estimate the

number of paper CBP 1302As that would be eliminated as a result of this proposed rule. CBP subtracted the estimated number of VTM transmissions by the estimated number of total vessel EEM data transmissions to estimate the number of paper CBP Form 1302As that would be eliminated as a result of this proposed rule during each year of the regulatory period. CBP expects that this proposed rule would eliminate approximately 56.6 million paper CBP Form 1302As or on average 11.3 million annually. Table 6 below displays CBP’s regulatory period estimates for non-empty containers departing the United States in the sea environment, the number of other vessel departures, total vessel EEM data transmissions, EEM data transmissions from previous VTM participants and estimated number of eliminated paper CBP Form 1302As.

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Table 6. Actual and Estimated Vessel EEM, VTM Transmissions and Paper CBP Form 1302As (2016-2030)

	Non-Empty Containers	Other Vessel Departures	Total Vessel EEM Data Transmissions	Vessel EEM Data Transmissions by VTM participants	VTM Data Transmissions	Estimated Number of Paper CBP 1302As
Pilot Period						
2016	11,875,482	16,172	207,437	207,437	597,288	11,086,929
2017	12,031,354	17,243	284,152	284,152	631,862	11,132,583
2018	12,291,082	17,722	332,291	332,291	666,666	11,309,847
2019	12,440,388	18,809	318,440	318,440	461,548	11,679,209
2020	11,456,383	20,155	323,069	323,069	416,683	10,736,786
2021	11,463,780	24,595	265,424	265,424	460,056	10,762,895
2022	10,940,680	25,186	288,889	288,889	383,248	10,293,729
2023*	11,111,479	26,611	749,113	527,938	188,811	10,421,341
2024*	11,284,944	28,117	749,113	527,938	188,811	10,596,312
2025*	11,461,118	29,708	749,113	527,938	188,811	10,774,077
Total	116,356,689	224,318	4,267,041	3,603,516	4,183,784	108,793,707
Regulatory Period						
2026	11,640,042	31,389	11,671,431	716,749		10,954,682
2027	11,821,759	33,165	11,854,924	716,749		11,138,175
2028	12,006,313	35,042	12,041,355	716,749		11,324,606
2029	12,193,748	37,025	12,230,773	716,749		11,514,024
2030	12,384,109	39,120	12,423,229	716,749		11,706,480
Total	60,045,970	175,741	60,221,711	3,583,745		56,637,966

* Pilot period years with estimated not actual values

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Pilot Period (2016–2025)

Overall, the vessel EEM test was meant to test the functionality of providing export manifest data elements electronically to CBP through ACE and to test the feasibility of outbound vessel carriers providing those data elements prior to loading cargo onto vessels attempting to depart the United States. Unfortunately, the test participants do not provide these data elements within the time frames CBP requested during the vessel EEM test. Instead of providing vessel EEM test data prior to loading cargo onto vessels, the test participants typically provide the vessel EEM test export manifest data elements to CBP within the time frames discussed during the baseline scenario, no later than four days post departure from the U.S. port of export. Therefore, during the pilot period CBP officers are not reviewing any vessel EEM test export manifest data these participants transmitted pre-

departure and all CBP review would be conducted post departure. Additionally, CBP and participating outbound vessel carriers do not review or resolve any 1H Enforcement holds or 2H Documentation holds, automatically issued through the vessel EEM test system when conducting risk assessment and screening export manifest data, during the pilot period. CBP does not expect that there will be any time burdens or costs associated with reviewing or resolving these holds during the pilot period and because export manifest data is not being provided prior to loading cargo onto vessels CBP does not expect that the vessel EEM test will limit the number of requests for a cargo or container to be returned or discharged at a second U.S. port.

Costs

CBP Costs

CBP expects that both CBP and outbound vessel carriers that participate in the vessel EEM test will incur costs during the pilot period. Because the vessel EEM test operates through ACE, CBP did not have to develop an entirely new system. CBP estimates that the one-time development costs for creating the vessel EEM test tool and implementing it into ACE was approximately \$911,916.⁵⁴ Beyond the systems costs from developing the vessel EEM test, CBP also experiences ongoing system operation and maintenance costs every year during the pilot period. CBP estimates ongoing maintenance of the vessel EEM test system will cost CBP a total of 1.5 million during the pilot period or on average \$138,117

⁵⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022.

annually.⁵⁵ Table 7 below displays CBP's systems costs related to the development and maintenance of the

vessel EEM test during the pilot period. CBP estimates that total CBP system costs during the pilot period will be

approximately \$2.4 million or on average \$221,018 annually.
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Table 7. Estimated CBP IT Systems Costs During Pilot Period (2015-2025) (costs in undiscounted 2023 U.S. dollars)

Year	Development	O&M	Total IT Costs
2015	\$911,916		\$911,916
2016		\$139,386	\$139,386
2017		\$142,035	\$142,035
2018		\$144,733	\$144,733
2019		\$147,483	\$147,483
2020		\$150,285	\$150,285
2021		\$153,141	\$153,141
2022		\$156,051	\$156,051
2023		\$159,016	\$159,016
2024*		\$162,037	\$162,037
2025*		\$165,116	\$165,116
Total	\$911,916	\$1,519,283	\$2,431,199

* Pilot period years with estimated not actual values

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Trade Member IT Costs

CBP estimates that participating outbound vessel carriers also incur costs during the pilot period. Outbound vessel carriers that participate in the vessel EEM test also incur costs to adjust their IT systems to meet the requirements of the vessel EEM test and provide export manifest data directly to CBP via ACE. Many outbound vessel carrier companies that engage in exporting cargo out of the United States also engage in importing cargo into the United States. Similar to many other countries, the United States requires electronic transmission of import manifest data, and therefore outbound vessel carrier companies already have IT systems to meet these import requirements. The export manifest data requirements for the vessel EEM test at export are very similar to data requirements for advance electronic import manifest data required during the import process. Outbound vessel carriers have already developed systems

for those electronic processes at import and, as such, the vessel EEM test participants stated that they did not need to develop new systems but merely adjusted existing IT systems.⁵⁶ As vessel carriers already have systems to interface with ACE for import filings, among other things, systems needed to be modified rather than developed. Trade members also stated that the IT system costs to participate in the vessel EEM test would be largely operation and maintenance costs associated with the new export portion of their IT system.⁵⁷ The cost of adjusting and maintaining IT systems to support providing export manifest data electronically to CBP can vary depending on the outbound vessel carrier or trade member. Therefore, CBP provides a range of estimates for the IT system costs to the average vessel EEM participant during the pilot period.

CBP anticipates that the annual IT systems costs required to participate in the vessel EEM test could range from approximately \$10,000 to \$60,000 each year.^{58 59} CBP used the midpoint within the range—\$35,000—as CBP's primary

estimate for annual IT systems costs to the average outbound vessel carrier participating in the vessel EEM test. As range estimates, CBP used a low estimate of \$10,000 and a high estimate of \$60,000 for the annual IT systems costs to each vessel EEM test participant each year. According to CBP's primary estimate the vessel EEM test participants will incur approximately \$2,065,000 in total costs to adjust and maintain their IT systems for providing EEM data to CBP during the pilot period. CBP's alternate low and high estimates show that IT systems total costs to the participating outbound vessel carriers could be between \$590,000 and \$3,540,000 during the pilot period. Table 8 displays CBP's range of cost estimates for total annual IT systems costs to outbound vessel carrier participants during the pilot period. CBP requests comments from outbound vessel carriers and trade members on the costs associated with adjusting information technology systems to provide vessel EEM test data to CBP.

⁵⁵ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations subject matter expert on December 13, 2022. CBP estimated the annual amounts for 2023–2024 by assuming costs increased by 1.9% annually, the same growth rate CBP assumed in the actual year values.

⁵⁶ Data was obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

⁵⁷ Data was obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

⁵⁸ Data was obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

⁵⁹ CBP notes that the two vessel EEM test participants in 2022 were already providing VTM electronic export data to CBP prior to participation in the vessel EEM test thus merely transitioning from one form of electronic data transmission to another. Therefore, CBP does not know if IT systems costs to an outbound vessel carrier would be greater than the high range estimate of \$60,000 annually if a carrier transitions from paper export manifest data to electronic data transmission as required by the vessel EEM test.

Table 8. Estimated Systems Costs to Vessel EEM Participants During Pilot Period 2015 - 2025 (cost in undiscounted 2023 U.S. dollars)

Year	Number of Vessel EEM Participants	Primary Estimate (\$35,000)	Low Estimate (\$10,000)	High Estimate (\$60,000)
2015	0	\$0	\$0	\$0
2016	2	\$70,000	\$20,000	\$120,000
2017	2	\$70,000	\$20,000	\$120,000
2018	2	\$70,000	\$20,000	\$120,000
2019	2	\$70,000	\$20,000	\$120,000
2020	2	\$70,000	\$20,000	\$120,000
2021	2	\$70,000	\$20,000	\$120,000
2022	2	\$70,000	\$20,000	\$120,000
2023	15	\$525,000	\$150,000	\$900,000
2024*	15	\$525,000	\$150,000	\$900,000
2025*	15	\$525,000	\$150,000	\$900,000
Total		\$2,065,000	\$590,000	\$3,540,000

* Pilot period years with estimated not actual values

Trade Member Opportunity Costs

In addition to costs associated with adjusting and maintaining information technology systems, CBP expects that some vessel EEM test participants face time burdens and opportunity costs when providing the vessel EEM test data to CBP. As mentioned earlier, as part of the vessel EEM test CBP requests that test participants provide the paper CBP Form 1302A along with the vessel EEM test data so that CBP can capture any inconsistencies or issues with the electronic transmission of vessel EEM test data to CBP. Because VTM participants are not required to provide paper CBP Form 1302As in addition to their VTM transmission, only vessel EEM test participants that were not previously VTM participants will incur this additional time burden when submitting both vessel EEM test data and paper CBP Form 1302As.⁶⁰ In Table 3, CBP provides an estimate for the number of vessel EEM test data transmissions that will be submitted by non-VTM participants (663,525) during the pilot period. CBP anticipates that during the pilot period, vessel EEM test participants that were not previously VTM participants incur a time burden of approximately 1.71 minutes (0.028 hours) per vessel EEM data transmission.⁶¹ CBP multiplied the

number of non-VTM participant EEM test data transmissions each year by the average time burden per transmission to estimate the time burden to vessel EEM test participants during each year of the pilot period. CBP estimates that these vessel EEM test participants will incur a time burden of around 18,889 hours. CBP calculated the costs to these outbound vessel carriers in the pilot period, by multiplying the total time burden (18,889) hours by the average hourly loaded rate for vessel operators (\$72.17). CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2022 median hourly wage rate for Captains, Mates, and Pilots of Water Vessels (\$45.77), which CBP assumes^{62 63} CBP

2022 and February 2023. CBP obtained time burden hours associated with providing vessel EEM data to CBP over the course of several months and the number of data transmissions provided. CBP used this data to estimate the average time burden associated with a single vessel EEM data transmission.

⁶² CBP calculated this loaded wage rate by first multiplying the Bureau of Labor Statistics' (BLS) 2022 median hourly wage rate for Captains, Mates, and Pilots of Water Vessels (\$45.77), which CBP assumes best represents the wage for captains, mates, and pilots of water vessels, by the ratio of BLS' Q4 2022 total compensation to wages and salaries for Transportation and Material Moving occupations (1.4736), the assumed occupational group for captains, mates, and pilots of water vessels, to account for non-salary employee benefits.

Source of median wage rate: U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, "May 2022 National Occupational Employment and Wage Estimates United States." Updated April 25, 2023. Available at https://www.bls.gov/oes/2022/may/oes_nat.htm. Accessed August 21, 2023. The total compensation to wages

anticipates that these outbound vessel carriers will incur time burden costs of approximately \$1,363,245 or on average \$454,415 annually during the pilot period. Table 9 displays CBP's time burden and cost estimates to non-VTM participants while providing the vessel EEM test data to CBP during the pilot period.

and salaries ratio is equal to the total compensation cost per hour worked for Transportation and Material Moving occupations (\$33.51) divided by the wages and salaries cost per hour worked for the same occupation category (\$22.74). See "Table 2. Employer Costs for Employee Compensation for civilian workers by occupational and industry group." Bureau of Labor Statistics, "Employer Costs for Employee Compensation—December 2022." Released March 17, 2023. Available at https://www.bls.gov/news.release/archives/eccec_03172023.pdf. Accessed August 29, 2023.

⁶³ CBP assumes an annual growth rate of 7.01% based on the prior year's change in the implicit price deflator, published by the Bureau of Economic Analysis. To adjust to 2023 dollars, multiply by the 2021–2022 percent change in the Bureau of Economic Analysis's Implicit Price Deflators for Gross Domestic Product (127.224/118.895–1). See "Table 1.1.9. Implicit Price Deflators for Gross Domestic Product," Line 1 Gross Domestic Product, annual. Bureau of Economic Analysis. Updated August 30, 2023.

Available at <https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInNoZXBzIjpbMSwyLDMsM10sImRhdiGEiOltblmNhdGVnb3pZXXMiLCJTdXJ2ZXkiXSxbIks5UEFfVGFibGVJTGldZCIsIjEzLl0sWyJGaXJzdF9ZZWFiYiwiMjAxNiJdLFsiTGFzdF9ZZWFiYiwiMjAyMyJdLFsiU2NhbgUiLCJlwl0sWyJlZCJpZCJlIj1dfQ==>. Accessed September 20, 2023.

⁶⁰ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on March 15, 2023.

⁶¹ CBP calculations based on data obtained from feedback and discussions with Trade members on the potential costs associated with providing EEM to CBP via ACE. Data was obtained in December

Table 9. Estimated Time Burden Costs to Vessel EEM Participants During Pilot Period 2015 - 2025 (time burden in hours, costs in undiscounted 2023 U.S. dollars)

Year	Data Transmissions by non-VTM participants	Time Burden per Transmission	Estimated Time Burden	Wage Rate	Time Burden Costs
2015		0.028		\$72.17	
2016		0.028		\$72.17	
2017		0.028		\$72.17	
2018		0.028		\$72.17	
2019		0.028		\$72.17	
2020		0.028		\$72.17	
2021		0.028		\$72.17	
2022		0.028		\$72.17	
2023	221,175	0.028	6,296	\$72.17	\$454,415
2024*	221,175	0.028	6,296	\$72.17	\$454,415
2025*	221,175	0.028	6,296	\$72.17	\$454,415
Total	663,525		18,889		\$1,363,245

* Pilot period years with estimated not actual values

Total Costs

CBP estimates that during the pilot period total costs from this proposed rule will be around \$5,859,444 or on

average \$532,677 per year. CBP anticipates CBP will incur total costs of around \$2,431,199 and outbound vessel carriers participating in the vessel EEM

test will incur costs around \$3,428,245. Table 10 below shows CBP's estimates for the total costs from this proposed rule during the pilot period.

Table 10. Total Estimated Costs During Pilot Period 2015-2025 (costs in undiscounted 2023 U.S. Dollars)

Year	CBP IT Costs	Test Participant System Costs	Test Participant Time Burden Costs	Total Participant Costs	Total Costs
2015	\$911,916				\$911,916
2016	\$139,386	\$70,000		\$70,000	\$209,386
2017	\$142,035	\$70,000		\$70,000	\$212,035
2018	\$144,733	\$70,000		\$70,000	\$214,733
2019	\$147,483	\$70,000		\$70,000	\$217,483
2020	\$150,285	\$70,000		\$70,000	\$220,285
2021	\$153,141	\$70,000		\$70,000	\$223,141
2022	\$156,051	\$70,000		\$70,000	\$226,051
2023	\$159,016	\$525,000	\$454,415	\$979,415	\$1,138,431
2024*	\$162,037	\$525,000	\$454,415	\$979,415	\$1,141,452
2025*	\$165,116	\$525,000	\$454,415	\$979,415	\$1,144,531
Total	\$2,431,199	\$2,065,000	\$1,363,245	\$3,428,245	\$5,859,444

* Pilot period years with estimated not actual values

Cost Savings

CBP expects that some vessel EEM test participants may have experienced some time and cost savings during the pilot period as a result of participating in the vessel EEM test. As stated earlier, two vessel EEM test participants provided export data to CBP through

VTM prior to participating in the vessel EEM test. Unlike the VTM, the vessel EEM test does not require outbound vessel carriers to submit and match booking data with the export manifest data.⁶⁴ Therefore, when transitioning

⁶⁴ If a vessel carrier participated in the vessel EEM test and was providing data via VTM prior to

from VTM to the vessel EEM test, these outbound vessel carriers experienced some time savings from no longer providing and matching booking data with the export manifest data. CBP

participating in the test, such a vessel carrier would not be required to provide VTM data when providing EEM data.

estimates that this resulted in a time savings to these outbound vessel carrier participants of approximately 30 minutes (0.5 hours) on average per departing vessel.⁶⁵ During the pilot period CBP obtained the number of export manifest data transmissions from outbound vessel carriers participating in the vessel EEM test but CBP does not have exact data available for the number of vessel departures that experience this potential time savings during the pilot period.

To estimate the number of vessel departures that experience this time savings as a result of the vessel EEM test, CBP used data from the WCSC. Outbound vessel carriers participating in the vessel EEM test that are expected to experience a times savings largely provide export data for dry cargo onboard large container vessels. WCSC data does not provide the level of detail necessary to identify the specific number of container vessels within the self-propelled dry cargo vessels classification. Therefore, CBP used WCSC data on outbound container volume and the number of self-

propelled dry cargo vessel departures to calculate an estimate for the number of vessel departures that experienced a time savings during the pilot period.⁶⁶ According to CBP's estimates from 2016 to 2025, there will be a total of 621,350 self-propelled dry cargo vessel trips and a total of 116,356,689 outbound non-empty containers. CBP assumes that for every outbound non-empty container, outbound vessel carriers would provide one export data submission. CBP assumes that these non-empty containers are equally distributed across all self-propelled dry cargo vessel departures.

CBP calculated the ratio of total outbound containers that will have vessel EEM test data transmitted by VTM participants during the vessel EEM test by dividing the total expected outbound non-containers departing the United States (see Table 5) by the expected number of export manifest data transmissions that will be provided by previous VTM participants during the vessel EEM test (see Table 3) for each year of the pilot period. Overall, CBP estimates that in total from 2016–

2025 these vessel EEM test participants transmitted around 3.1% of all expected export manifest data submissions. To determine an estimate for the number of vessel departures affected by the vessel EEM test during the pilot period, CBP multiplied the ratio of total export manifest data transmitted by VTM participants during the vessel EEM test by the estimated number of self-propelled dry cargo vessel departures each year (see Table 4). During the pilot period CBP estimates that, as a result of the vessel EEM test, previous VTM participants experienced a time savings from 20,167 vessel departures or on average 2,017 vessel departures annually.⁶⁷ Table 11 displays CBP's estimates for total EEM data transmitted to the vessel EEM test, data from WCSC for non-empty container traffic and self-propelled dry cargo vessel departures for 2016–2022, along with CBP's estimates for 2023, 2024, and 2025 and CBP's estimate for the number of vessel EEM test departures that will experience a time savings from no longer having to match booking data.

Table 11. Estimated Vessel Departures with Time Savings during Pilot Period (2015-2025)

Year	Vessel EEM Data Transmissions by VTM Participants	Non-Empty Containers	VTM to EEM Data Transmissions as a Percent of Total	Self-Propelled Dry Vessel Departures	Estimated Vessel EEM Departures With Time Savings
2015					
2016	207,437	11,875,482	1.75%	52,018	909
2017	284,152	12,031,354	2.36%	51,322	1,212
2018	332,291	12,291,082	2.70%	51,515	1,393
2019	318,440	12,440,388	2.56%	55,602	1,423
2020	323,069	11,456,383	2.82%	54,788	1,545
2021	265,424	11,463,780	2.32%	64,129	1,485
2022	288,889	10,940,680	2.64%	71,580	1,890
2023*	527,938	11,111,479	4.75%	72,514	3,445
2024*	527,938	11,284,944	4.68%	73,461	3,437
2025*	527,938	11,461,118	4.61%	74,420	3,428
Total	3,603,516	116,356,689		621,350	20,167

* Pilot period years with estimated not actual values

To calculate the potential time savings experienced by these outbound vessel carriers during vessel EEM test

participation, CBP multiplied the expected number of vessel EEM departures (20,167) by the average time

savings per vessel (0.5 hours). CBP estimates that during the pilot period these outbound vessel carrier

⁶⁵ This estimate was based on data obtained from feedback from Trade members on the potential costs to internal IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

⁶⁶ For vessel departures WCSC provides data in six categories, self-propelled dry, tanker, towboat, dry cargo barge, liquid barge, crane (other).

Unfortunately, WCSC does not provide departure data on container vessels only. Therefore, due to this lack of data CBP assumes that the self-propelled dry vessel category is the appropriate classification for large container vessels; however, there are other vessels included in the total count for self-propelled dry cargo vessels beyond large container vessels. Additionally, WCSC most recent

data is only available through 2022, therefore CBP projected the number of self-propelled dry vessel departures and number of non-empty containers above in Tables 4 and 5 above.

⁶⁷ Because participation did not begin until 2016, the annual average for vessel departures is based on 2016–2022 departures.

participants experienced a total of 10,083 hours in time savings or on average 917 hours annually.

CBP quantified these time savings using the average hourly loaded wage rate for vessel operators (\$72.17). CBP estimates that for each vessel EEM

departure the participating carriers experienced a cost savings of approximately \$36.09 (\$72.17 X 0.5 hours). CBP estimates that the total cost savings to outbound vessel carrier participants during the vessel EEM test will be approximately \$727,716 or on

average \$66,156 annually.⁶⁸ Table 12 displays CBP's estimates for the time and cost savings that will be experienced by outbound vessel carriers participating in the vessel EEM test that were prior VTM participants during the pilot period.

Table 12. Estimated Vessel Departures with Time Savings during Pilot Period 2015-2025 (time savings in hours, cost savings in undiscounted 2023 U.S. dollars)

Year	Estimated Vessel EEM Departures With Time Savings	Time Savings per Departure	Total Time Savings	Wage Rate	Total Cost Savings
2015		0.5	-	\$72.17	\$0
2016	909	0.5	454	\$72.17	\$32,788
2017	1,212	0.5	606	\$72.17	\$43,739
2018	1,393	0.5	696	\$72.17	\$50,256
2019	1,423	0.5	712	\$72.17	\$51,358
2020	1,545	0.5	773	\$72.17	\$55,752
2021	1,485	0.5	742	\$72.17	\$53,579
2022	1,890	0.5	945	\$72.17	\$68,203
2023*	3,445	0.5	1,723	\$72.17	\$124,326
2024*	3,437	0.5	1,718	\$72.17	\$124,013
2025*	3,428	0.5	1,714	\$72.17	\$123,701
Total	20,167		10,083		\$727,716

* Pilot period years with estimated not actual values

Benefits

According to Section 343(a) of the Trade Act (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). CBP developed and implemented the vessel EEM test to determine a feasible process to implement the Trade Act authority. Because during the pilot period vessel EEM test participants are not providing export manifest data to CBP prior to the cargo loading or prior to departure of the vessel, CBP does not believe that vessel carrier participants or CBP experience any benefits from the vessel EEM test during the pilot period. Because participants are not providing export manifest data to CBP earlier in the export process when compared to the baseline scenario, the vessel EEM test likely will not affect CBP's ability to

identify high-risk cargo and improve cargo safety and security measures during the pilot period. CBP acknowledges that if there were any benefits during the pilot period, they will most likely be minimal. CBP believes that there could be some gained efficiencies from obtaining export manifest data in an integrated system even when provided post departure if CBP reviews the vessel EEM test data once received four or more days post departure. Unfortunately, CBP does not have data on how often this occurred prior to the vessel EEM test or during the pilot period but CBP expects it was most likely infrequent.⁶⁹ The pilot was deemed successful not for the benefits attained during the pilot period but because of the cost savings and because it helped CBP and the trade identify a workable regulatory framework in line to implement the Trade Act of 2002 authority.

Net Impact of the Pilot Period

During the pilot period the vessel EEM test results in costs to CBP and vessel EEM test participants and some cost savings to some test participants. Because outbound vessel carriers are not providing the export manifest data within the timeframes requested by CBP during the test, the vessel EEM test will not likely result in security benefits during the pilot period. According to CBP's estimates the vessel EEM test will result in total net costs of over \$5,131,729 or on average \$466,521 annually. CBP incurred IT systems costs of approximately \$2,431,199 during the pilot period while vessel carrier participants experienced net costs of around \$2,700,529 or on average \$245,503 annually.⁷⁰ Table 13 displays CBP's estimates for net costs from the vessel EEM test during the pilot period.

⁶⁸ The annual average only includes data from years 2016–2025.

⁶⁹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 15, 2022 and February 15, 2023.

⁷⁰ Average annual net costs to outbound vessel carriers were based on data from 2016–2025 since no costs or cost savings were incurred in 2015.

Table 13. Total Net Costs during the Pilot Period 2015-2025 (cost in U.S. 2023 dollars)

Year	CBP Costs	Vessel Participant Costs	Vessel Participant Cost Savings	Vessel Participant Net Costs	Total Net Costs
2015	\$911,916	\$0	\$0	\$0	\$911,916
2016	\$139,386	\$70,000	\$32,788	\$37,212	\$176,598
2017	\$142,035	\$70,000	\$43,739	\$26,261	\$168,296
2018	\$144,733	\$70,000	\$50,256	\$19,744	\$164,477
2019	\$147,483	\$70,000	\$51,358	\$18,642	\$166,125
2020	\$150,285	\$70,000	\$55,752	\$14,248	\$164,533
2021	\$153,141	\$70,000	\$53,579	\$16,421	\$169,562
2022	\$156,051	\$70,000	\$68,203	\$1,797	\$157,848
2023*	\$159,016	\$979,415	\$124,326	\$855,089	\$1,014,105
2024*	\$162,037	\$979,415	\$124,013	\$855,402	\$1,017,439
2025*	\$165,116	\$979,415	\$123,701	\$855,714	\$1,020,830
Total	\$2,431,199	\$3,428,245	\$727,716	\$2,700,529	\$5,131,729

* Pilot period years with estimated not actual values

Table 14 below displays CBP's estimate for discounted net costs from the vessel EEM test during the pilot period. As shown, CBP expects that this proposed rule will result in net costs to

CBP and participating vessel carriers during the pilot period ranging from \$4,167,303 in 2023 U.S. dollars using a three percent discount rate and \$3,248,717 in 2023 U.S. dollars using a

seven percent discount rate. CBP estimates that annualized net costs will range from \$450,391 using a three percent discount rate to \$433,329 using a seven percent discount rate.

Table 14. Total Monetized Present Value and Annualized Net Costs of Pilot Period 2015-2025 (2023 U.S. Dollars)

	3% Discount Rate	7% Discount Rate
Present Value Costs	\$4,167,303	\$3,248,717
Annualized Cost	\$450,391	\$433,239

Regulatory Period (2026–2030)

For the regulatory period CBP estimated the future costs, cost savings, and benefits to CBP, vessel carriers, other trade members and other Federal government agencies as a result of the implementation of the vessel EEM program. During the regulatory period CBP would require trade members providing data to abide by the deadlines established by the proposed rule and, as a result of providing the export manifest data prior to loading cargo onto vessels, there would be additional effects that

did not exist during the pilot period. These effects would also be on a much larger scale during the regulatory period because all outbound vessel carriers and some other trade members would be affected.

Summary of Changes and Effects of This Proposed Rule

This proposed rule would directly result in a number of required changes that would affect both CBP and trade members. CBP was able to quantify some of the costs, cost savings and

benefits resulting from these changes; however, due to lack of available data and information for some of these changes, CBP could only discuss these effects qualitatively. CBP provides in Table 15 below, a summary of the changes, costs, cost savings, benefits, and where the change or effect is discussed in greater detail in the regulatory period section of this analysis.

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Table 15. Summary of the Costs and Benefits of Vessel EEM Implementation in the Regulatory Period

Summary of Change	Annual Cost, Cost Savings or Benefit	Regulatory Period Analysis Section
CBP Maintaining IT Systems for Vessel EEM	COST: \$175,000	CBP IT Systems Costs
CBP Time Burden to Review and Address CBP Issued Holds on Vessel EEM Data	COST: \$826,000	CBP Opportunity Costs
Additional Cargo Examinations Related to ATS Review of All Vessel Exported Cargo	COST: CBP does not expect this proposed rule will result in additional manual cargo examinations by CBP Officers. If additional examinations result, CBP anticipates this will cost CBP approximately \$101.44 per examination.	CBP Miscellaneous Costs
Trade Members IT Systems Updates and Maintenance to Provide Vessel EEM Data to CBP	COST: \$17,500,000	Trade Member IT Systems Costs
Trade Members Providing Vessel EEM Data	COST: \$24,700,000	Trade Member Opportunity Costs
Trade Members Addressing and Resolving CBP Issued Holds on Vessel EEM Data	COST: \$7,300,000	Trade Member Opportunity Costs
Require CBP 1300 Submission Two hours Prior to Departure	COST: CBP does not expect this to result in more than negligible costs if any.	Trade Member Miscellaneous Costs
Trade Members Complying with New Data Transmission Deadlines	COST: Vessel carriers will have to cooperate with other trade members to provide completed export manifest data within the deadlines of this proposed rule, at least 4 days earlier than prior to this rule. CBP notes that for many exports, pre-departure data is already required by either existing U.S. export regulations or existing import requirements from the country to which the cargo is being shipped.	Trade Member Miscellaneous Costs
Trade Members Transitioning Business Practices from a Paper to Electronic Process	COST: Trade members could incur costs related to this transition; however, CBP expects this to be minimal because trade members likely already have such practices developed to provide manifest data for imports that can be reused to provide export manifest data.	Trade Member Miscellaneous Costs
Bond Requirement for Participants	COST: CBP expects these costs would be minimal if any as all trade members generally are already subject to other bond requirements that would qualify them to participate in the vessel EEM.	Trade Member Miscellaneous Costs
Require Vessel EEM Participants to Have Staff Available for Contact	COST: CBP expects these costs would be negligible since additional staffing would not be required.	Trade Member Miscellaneous Costs
Trade Members Subject to Noncompliance Penalties and Claims for Liquidated Damages	COST: CBP expects such penalties and liquidated damages to be minimal and these are used as an enforcement tool to improve compliance with U.S. export laws and regulations.	Trade Member Miscellaneous Costs
Transitioning from VTM Participation to Vessel EEM submission	COST SAVING: \$166,192	Trade Member Opportunity Cost Savings
Eliminating the Paper CBP Form 1302A	COST SAVING: \$41,000,000	Trade Member Opportunity Cost Savings
Eliminating CBP Requests for Cargo Returns	COST SAVING: \$11,800,000 BENEFIT: CBP estimates this proposed rule would eliminate 2,261 requests for return annually, preventing these shipments from leaving the United States before examination; this is an added benefit of cargo security to CBP.	Trade Member Opportunity Cost Savings / Benefits Sections
Eliminating CBP Requests for Discharges	COST SAVING: \$4,300,000 BENEFIT: CBP estimates this proposed rule would eliminate 2,898 requests for discharge annually, preventing these shipments from boarding a vessel attempting to depart United States before examination; this is an added benefit of cargo security to CBP.	Trade Member Opportunity Cost Savings / Benefits Sections
Reducing Printing and Paper Costs	COST SAVING: CBP anticipates that moving to electronic data transmission of export manifest data would reduce the space required to store and file paper manifest documents, generating savings to vessel carriers and other trade members	Trade Member Miscellaneous Cost Savings
Compliance with Trade Act of 2002 in Air Environment	BENEFIT: According to the Trade Act of 2002, CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). This proposed rule would allow CBP to implement the Trade Act authority in the sea environment.	Benefits
Enhance CBP Security Efforts	BENEFIT: Vessel EEM data transmission allows CBP to use ATS to conduct risk assessment on all exports in the sea environment, assisting CBP to prevent smuggling and improve CBP's efforts to ensure cargo safety and security.	Benefits
Improve Government Coordination on Exports	BENEFIT: Improve coordination and communication between CBP and the Department of Commerce and other government agencies with export jurisdiction, while enforcing U.S. export laws and regulations.	Benefits

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Costs

CBP IT Systems Costs

CBP would bear technology and opportunity costs by expanding the existing test to a mandatory program for all outbound vessel carriers and all exports in the sea environment. CBP does not anticipate it would incur any costs to develop new systems during the regulatory period because CBP completed the system development and implementation of the vessel EEM application into ACE during the pilot period. CBP does expect to incur some ongoing systems operations and maintenance costs associated with the vessel EEM application in ACE. Over the course of the regulatory period, CBP estimates that ongoing systems costs associated with the vessel EEM would be approximately \$873,847 or on average \$174,769 each year.⁷¹

CBP Opportunity Costs

In addition to the ongoing systems costs, CBP expects to incur additional time burdens as a result of CBP officers manually reviewing, addressing and resolving 1H Enforcement holds during the regulatory period. To estimate the number of CBP 1H Enforcement holds that would be issued during the regulatory period, CBP used the number

of CBP 1H Enforcement holds issued from 2018 through 2023 (6,157) compared to the total number of vessel export manifest data transmissions during the vessel EEM test during that same time period (2,277,226).⁷² CBP estimates that on average a 1H Enforcement hold was issued on 0.27 percent (6,157 divided by 2,277,226) of all EEM test data transmissions. CBP assumes that during the regulatory period the percent of 1H Enforcement holds issued per export manifest data transmissions would remain relatively constant compared the percent issued from 2018–2023. CBP multiplied the estimated 1H Enforcement hold rate of 0.27 percent by the estimated future volume of export manifest data transmissions to CBP (see Table 6) to estimate the number of 1H Enforcement holds issued during each year of the regulatory period.

Although CBP does not anticipate 2H Documentation holds would require any action or response by a CBP officer, 2H Documentation holds would affect trade members and for consistency CBP elected to present the calculation of all estimated future holds together in Table 16. During the vessel EEM test, 2H Documentations holds are not being issued because participants are only

providing data once it is complete and finalized no later than four days post departure. Therefore, in order to estimate the number of 2H Documentation holds that would be generated during the regulatory period as a result of this proposed rule, CBP used data obtained from a similar EEM test program—the ACE Electronic Export Manifest for Rail Cargo test (rail EEM test). In the rail EEM test, 2H Documentation holds were issued for approximately 3.78% percent of all EEM test data transmissions and CBP uses this as a proxy for how many 2H Documentation holds would be issued during the vessel EEM regulatory period.⁷³ To estimate the potential number of CBP issued holds each year of the regulatory period, CBP multiplied the percentage of data transmissions that were issued holds during the pilot period by the estimated number of total data transmissions. CBP anticipates that this proposed rule would result in CBP issuing approximately 162,823 1H Enforcement holds and around 2,276,381 2H Documentation holds during the regulatory period. Table 16 below displays CBP's estimates for the number of 1H Enforcement holds and 2H Documentation holds that would be issued each year as a result of this proposed rule.

⁷¹ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 13, 2022. CBP extrapolated ongoing maintenance and operations costs using a 1.9% annual increase each year, as used in the initial estimate provided.

⁷² CBP vessel EEM test data provided by CBP's Cargo and Conveyance Security, Office of Field Operations, on December 13, 2022 and December 20, 2023. CBP did not include 2016 and 2017 in the calculation because the vessel EEM test was gradually being implemented and 1H Enforcement holds were not issued for all vessel EEM test data transmissions until 2018.

⁷³ Data from the ACE Electronic Export Manifest for Rail Cargo test for years 2020–2023, provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on December 6, 2022, and May 9, 2024. Data obtained from CBP's ACE.

Table 16. Actual and Estimated Holds Issued by Vessel EEM 2015-2030

	Vessel EEM Data Transmissions	1H Enforcement Holds Issued	2018-2023 1H Holds Per Data Transmission
Pilot Period			
2015			
2016	207,437	7	
2017	284,152	246	
2018	332,291	607	
2019	318,440	453	
2020	323,069	681	
2021	265,424	763	
2022	288,889	1,112	
2023	749,113	2,541	0.27%
2024*	749,113	-	
2025*	749,113	-	
Total	4,267,041		
	Vessel EEM Data Transmissions	1H Enforcement Holds Issued 0.27% of all Transmissions	2H Documentation Holds Issued on 3.78% of all Transmissions
Regulatory Period			
2026	11,671,431	31,556	441,180
2027	11,854,924	32,052	448,116
2028	12,041,355	32,557	455,163
2029	12,230,773	33,069	462,323
2030	12,423,229	33,589	469,598
Total	60,221,711	162,823	2,276,381

* Pilot period years with estimated not actual values

CBP believes that it is possible that the total number of holds could be fewer than these estimates during the regulatory period as outbound vessel carriers and other trade members become more familiar and efficient at providing the pre-departure EEM data, potentially improving compliance and limiting the number of holds CBP issues. CBP has not issued any DNL holds during the vessel EEM test and does not expect a significant number of DNL holds to be issued during the regulatory period.⁷⁴ If DNL holds are issued, this would be an additional cost to outbound vessel carriers, who are ultimately responsible for loading and not loading cargo.

CBP estimates that a total of 162,823 1H Enforcement holds would be issued during the regulatory period. CBP expects that the time burden to a CBP officer to manually review a 1H Enforcement hold is about 5 minutes

(0.083 hours).⁷⁵ CBP also anticipates that after reviewing these holds CBP officers would incur an additional time burden to address and resolve these 1H Enforcement holds. Depending on the complexity of the hold and if it is determined that a CBP officer needs to manually examine cargo, the time burden to CBP officers to address and resolve these holds varies from a few minutes to a few hours.⁷⁶ CBP expects that the majority of these 1H Enforcement holds issued would not result in a cargo examination.⁷⁷ CBP estimates that, on average, CBP officers

⁷⁵ CBP assumes that the time to review a 1H Enforcement hold should not differ depending on the environment, therefore CBP uses time burden estimates provided in the NPRM ACE Electronic Export Manifest for Rail Exports analysis to review and resolve a 1H Enforcement hold.

⁷⁶ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, meeting with subject matter experts on December 15, 2022.

⁷⁷ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, meeting with subject matter experts on December 15, 2022.

incurred an additional time burden of ten minutes (0.167 hours) to address and resolve each 1H Enforcement hold.⁷⁸ In total CBP expects on average a CBP officer to incur a time burden of approximately 15 minutes (0.25 hours) to review and resolve each 1H Enforcement hold.

To calculate the estimated time burden to CBP officers to review and resolve 1H Enforcement holds during each year of the regulatory period, CBP multiplied the estimated number of 1H Enforcement holds issued each year by the combined time burden to CBP officers to review and resolve these holds. During the course of the regulatory period CBP expects that CBP officers would incur a time burden of approximately 40,706 hours (162,823 1H Enforcement holds x 0.25 hours) when reviewing and resolving 1H Enforcement holds. CBP calculated the costs to CBP officers in the regulatory

⁷⁸ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, meeting with subject matter experts on December 15, 2022.

⁷⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter experts on December 13, 2022.

period, by multiplying the total time burden (40,706) hours by the average hourly loaded rate for a CBP officer (\$101.44).⁷⁹ As a result of this proposed

rule, CBP estimates that CBP officers would incur time burden costs of approximately \$4,129,195 or on average \$825,839 annually during the regulatory

period. Table 17 shows CBP estimates for time burden and costs to CBP officers during the regulatory period.

Table 17. Estimated Time Burden and Costs to CBP from 1H Enforcement Holds During Regulatory Period 2026-2030(time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2028	2028	2029	2030	Total
Estimated 1H Enforcement Holds	31,556	32,052	32,557	33,069	33,589	162,823
Average Time Burden to Review 1H Hold	0.25	0.25	0.25	0.25	0.25	
Total Time Burden to CBP Officers	7,889	8,013	8,139	8,267	8,397	40,706
CBP Officer Wage Rate	\$101.44	\$101.44	\$101.44	\$101.44	\$101.44	
Costs to CBP Officers	\$800,270	\$812,851	\$825,634	\$838,622	\$851,818	\$4,129,195

CBP Miscellaneous Costs

CBP does not expect that this proposed rule would result in additional cargo examinations when compared to the baseline. To the extent that CBP is wrong and there are more manual examinations of cargo as a result of issued 1H Enforcement holds when compared to the baseline, then the time burden to CBP officers during the regulatory period would be larger than CBP estimated. Unfortunately, CBP does not have data on how many 1H

Enforcement holds typically result in a cargo examination. In the case where CBP determines it is necessary to conduct a physical examination of cargo or a container on average a CBP officer is able to complete the examination and submit the findings in about 60 minutes.⁸⁰ Given the CBP officer hourly loaded wage rate of \$101.44, CBP estimates the average time burden cost to CBP to conduct a cargo or container examination is approximately \$101.44 per examination. Again, CBP does not

expect that this rule would result in additional cargo examinations.

In total, CBP estimates that CBP would incur around \$5.0 million in costs during the regulatory period or on average around \$1.0 million annually, from operation and maintenance costs for the vessel EEM application in ACE and opportunity costs from reviewing and resolving 1H Enforcement holds. CBP displays its estimates for total costs to CBP during each year of the regulatory period below in Table 18.

Table 18. Total Estimated Costs to CBP during Regulatory Period 2026-2030 (cost in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
IT Systems O&M Costs	\$168,253	\$171,450	\$174,708	\$178,027	\$181,410	\$873,847
Time Burden Costs	\$800,270	\$812,851	\$825,634	\$838,622	\$851,818	\$4,129,195
Total Costs	\$968,523	\$984,301	\$1,000,342	\$1,016,649	\$1,033,227	\$5,003,042

Trade Member IT Systems Costs

CBP anticipates that this proposed rule would result in costs to trade members in the form of both IT systems and opportunity costs. CBP estimates that this proposed rule would require that all 45 outbound vessel carriers and approximately 455 other trade members would incur costs to adjust and maintain their IT systems to provide

EEM data directly to CBP via ACE.⁸¹ CBP anticipates that the cost to adjust and maintain IT systems could vary significantly depending on the outbound vessel carrier or other trade member, and therefore CBP provides a range of estimates for the annual IT system costs to the average vessel EEM participant during the regulatory period. CBP uses the same range of estimates

provided during the pilot period cost section of this analysis. CBP’s primary estimate suggests that the average outbound vessel carrier or other trade member would incur an annual cost of approximately \$35,000. CBP also provides a range of costs using a low estimate of \$10,000 and a high estimate of \$60,000 for the average annual cost to

⁷⁹ CBP bases this wage on the FY 2022 salary, benefits, premium pay, non-salary costs and awards of the national average of CBP Officer Positions, which is equal to a GS–11, Step 10. Source: Email

correspondence with CBP’s Office of Finance on September 26, 2023.

⁸⁰ Information provided by CBP’s Cargo and Conveyance Security, Office of Field Operations, subject matter experts on December 15, 2022.

⁸¹ CBP discusses the expected number of trade members affected by this rule above in the population affected by the proposed rule section of this analysis.

the average outbound vessel carrier or other trade member.⁸²

CBP expects that approximately 500 trade members would incur systems costs to adjust and maintain their IT systems while providing EEM data to vessel EEM.⁸³ CBP notes that it is voluntary for the other trade members to provide the export manifest cargo data directly to CBP via ACE. If no other party elects to provide this export manifest cargo data, then outbound vessel carriers must provide the export manifest data. CBP believes that other trade members would only participate if it were beneficial for their business or company. Therefore, CBP does not anticipate these other trade members would provide export cargo manifest data directly to CBP if their participation resulted in net costs. If more than 455 other trade members

decide to provide data directly to CBP, costs would be higher, but cost savings would be even higher—otherwise these trade members would have no incentive to do so.

To estimate the cost to outbound vessel carriers and other trade members from operating and maintaining their IT systems to support participation in the vessel EEM, CBP multiplied the average annual cost by the number of expected vessel EEM participants each year (500). According to CBP's primary estimate for operating and maintaining IT systems vessel EEM participants would incur costs of approximately

\$87.5 million or on average \$17.5 million annually. Considering CBP's range estimates under the low estimate, vessel EEM participants would incur costs of around \$25.0 million or \$5.0 million annually and the high estimate

shows IT systems costs of approximately \$150.0 million or \$30.0 million annually. Table 18 displays CBP's estimates for IT systems costs to trade members during the regulatory period. CBP notes that if this proposed rule results in more than the estimated other trade members (455 trade members) electing to provide vessel EEM data directly to CBP, then the IT systems costs to trade members would be higher than CBP estimates below. CBP requests comments from outbound vessel carriers and trade members on the potential costs during the regulatory period related to IT system adjustments, operation and maintenance needed to support transmitting pre-departure EEM data to CBP via ACE and how likely would trade members other than outbound vessel carriers provide vessel EEM data directly to CBP.

Table 18. Estimated IT Systems Costs to Vessel EEM Participants during Regulatory Period 2026-2030 (costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel EEM Participants	500	500	500	500	500	
CBP Primary Estimate (\$35,000 per carrier)	\$17,500,000	\$17,500,000	\$17,500,000	\$17,500,000	\$17,500,000	\$87,500,000
Low Estimate (\$10,000 per carrier)	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$25,000,000
High Estimate (\$60,000 per carrier)	\$30,000,000	\$30,000,000	\$30,000,000	\$30,000,000	\$30,000,000	\$150,000,000

Trade Member Opportunity Costs

In addition to costs associated with adjusting and maintaining IT systems, CBP expects that outbound vessel carriers and other trade members would face time burdens and opportunity costs when providing the vessel EEM data to CBP and responding to 2H Documentation holds and 1H Enforcement holds. Because this proposed rule would require all outbound vessel carriers to provide export manifest data electronically to CBP prior to cargo loading onto vessels, CBP anticipates that all 45 outbound vessel carriers would incur a time burden to transmit this data to CBP as part of the vessel EEM. In addition, CBP expects that 455 other trade members choosing to transmit this data to CBP,

though they are not required to do so, would also incur a time burden. Since transmitting this data is not required for other trade members, CBP believes they would only choose to do so if the benefits of doing so outweigh their costs. As CBP does not know how much of the data would be filed by outbound vessel carriers and how much by other trade members, CBP displays the time burden of providing the export manifest data electronically to CBP as a cost to trade as a whole. Additionally, CBP assumes that the time burden to provide this data to CBP would be the same across all outbound vessel carriers, regardless of if an outbound vessel carrier participated in VTM or if it provided paper CBP Form 1302A prior to this proposed rule, and any other

participating other trade member electing to provide vessel EEM data directly to CBP. CBP anticipates that during the regulatory period trade members would incur a time burden of approximately 1.71 minutes (0.028 hours) per vessel EEM data transmission.⁸⁴ CBP acknowledges that the transition to electronic data submission would allow trade members to automate some of the process involved in providing the export manifest data to CBP. CBP notes that this estimated time burden to provide a vessel EEM data transmission is less than the expected time burden to submit a paper CBP Form 1302A. The elimination of the time burden to submit a paper CBP Form 1302A is discussed in the Trade Member

⁸² Data obtained from feedback and discussions with Trade members on the potential costs associated with IT systems to support providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

⁸³ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations, subject matter expert on June 13, 2023.

⁸⁴ CBP calculations based on data obtained from feedback and discussions with Trade members on the potential costs associated with providing EEM to CBP via ACE. Data was obtained in December

2022 and February 2023. CBP obtained time burden hours associated with providing vessel EEM data to CBP over the course of several months and the number of data transmissions provided. CBP used this data to estimate the average time burden associated with a single vessel EEM data transmission.

Opportunity Cost Savings section below. To estimate the time burden to trade members, CBP multiplied the average time burden per vessel EEM data transmission by the estimated number of vessel EEM data transmissions during each year of the regulatory period (see Table 6). During the regulatory period CBP estimates that trade would incur a time burden of

approximately 1,714,403 hours or on average 342,881 hours annually to provide the required export manifest data to CBP as a result of the implementation of the vessel EEM. To calculate the costs to trade members, CBP multiplied the estimated time burden each year during the regulatory period by the loaded hourly wage rate for vessel operators (\$72.17). According

to CBP’s estimates, the time burden to transmit vessel EEM data would cost trade members around \$124 million during the regulatory period or on average around \$24.7 million annually. Table 20 displays CBP’s calculations and estimates for the time burden and costs to trade during the regulatory period when providing vessel EEM to CBP via ACE.

Table 20. Estimated Time Burden and Costs to Trade When Transmitting Vessel EEM Data during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel EEM Data Submissions	11,671,431	11,854,924	12,041,355	12,230,773	12,423,229	60,221,711
Average Time Burden	0.028	0.028	0.028	0.028	0.028	
Total Time Burden	332,265	337,488	342,796	348,188	353,667	1,714,403
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Cost to Trade	\$23,979,532	\$24,356,527	\$24,739,558	\$25,128,727	\$25,524,138	\$123,728,482

During the pilot period EEM data provided as part of the vessel EEM test was not transmitted prior to departure therefore participating vessel carriers did not review or resolve any holds during the pilot period. However, during the regulatory period CBP expects that outbound vessel carriers and other trade members that provide EEM data to CBP would incur time burdens and opportunity costs while responding to CBP issued holds. During the regulatory period, the trade member that provides the export manifest data to CBP would be the party responsible for responding to any questions, holds or issues that arise from CBP’s review of that export data. During the regulatory period CBP expects that the time burden to respond to each hold depends on the complexity of the issue. When a party is reviewing and responding to holds, if that party does not have the necessary information and needs to obtain the data from another trade member, that would impose an additional time burden on both parties. Unfortunately, during the vessel EEM test, outbound vessel carriers did not provide export manifest data any earlier in the export process then during the baseline (no later than four days post departure), therefore CBP did not issue any 2H Documentation holds or any 1H Enforcement holds issued prior to departure. Therefore, vessel EEM test participants did not review or address these holds during the test. Because the participants did not actually go through the process of

reviewing and responding to any CBP issued holds during the pilot period, CBP was not able to obtain feedback from trade members on the average time burden an outbound vessel carrier or other trade party would incur to address a 2H Documentation or a 1H Enforcement hold.

In order to provide a time burden estimate to outbound vessel carriers and other trade members when responding to holds issued by CBP as a result of the vessel EEM, CBP used feedback from trade members from a different EEM test. CBP assumes the time burden to respond to a CBP issued hold in the sea environment would be similar to the time burden faced by trade members to respond to 2H Documentation and 1H Enforcement holds in the rail environment. CBP anticipates that the time burden to outbound vessel carriers and other trade members to review and resolve the average hold (including both 2H Documentation holds and 1H Enforcement holds) during the regulatory period would be approximately 12.5 minutes (0.21 hours) for each 2H Documentation and 1H Enforcement hold.⁸⁵ CBP requests

⁸⁵ Data obtained from CBP discussion with Trade members on the potential costs to review and resolve holds issued by CBP in response to EEM data transmitted. Time burdens vary greatly depending on the complexity of the issue; CBP took this into consideration when calculating the average time burden to review and address an issued hold. Data obtained in February 2023. For the analysis of the vessel EEM, CBP used regulatory period time burden estimates from the NPRM for ACE EEM for

comment on the relative time to resolve holds in the sea environment.

CBP does not expect that such holds would result in CBP officers conducting additional cargo examinations when compared to the baseline. However, if CBP did conduct more cargo examinations when compared to the baseline then the time burden costs to trade members to review and resolve holds could be higher than what CBP provides in this analysis. CBP does not track how many cargo examinations CBP officers conducted each year and CBP does not know how many (or the percentage) of 1H Enforcement holds would result in a cargo examination during the regulatory period. If this proposed rule resulted in significantly more cargo examinations, CBP would expect the average time burden to respond to each hold would likely be higher than CBP’s estimate. Additionally, CBP was unable to estimate the number of holds issued that would require multiple parties being involved in reviewing and resolving of holds. If responding to issued holds always requires multiple parties to be involved, then the time burden to review and resolve a hold would also likely be higher than the 12.5-minute estimate CBP provided above.

To estimate the time burden to trade during the regulatory period when reviewing and resolving holds, CBP

Rail Cargo analysis; CBP assumes the time burden when responding to CBP issued holds should not differ depending on the environment.

multiplied the total number of expected holds issued each year during the regulatory period by the estimated average time burden to review and resolve a hold (0.21 hours). CBP expects that during the regulatory period, trade members would review and resolve around 2,274,184 2H Documentation holds and 162,823 1H Enforcement

holds (see Table 16), resulting in a total time burden of approximately 507,710 hours or on average 101,542 hours annually. CBP calculated the costs to trade members from reviewing and resolving these holds by multiplying the total hours of time burden by the average hourly loaded wage rate for vessel operators (\$72.17). CBP

anticipates that overall costs to trade from reviewing and resolving holds as a result of this proposed rule would be around \$36.6 million or on average \$7.3 million annually.

Table 21 shows CBP regulatory period estimates for time burden and costs to trade associated with the review and resolution of holds issued by CBP.

Table 21. Estimated Time Burden and Costs to Trade from CBP Issued Holds during Regulatory Period, 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
1H Enforcement Holds	31,556	32,052	32,557	33,069	33,589	162,823
2H Documentation Holds	440,754	447,684	454,724	461,877	469,145	2,274,184
Total Holds Issued	472,311	479,736	487,281	494,946	502,734	2,437,007
Time Burden per hold	0.208	0.208	0.208	0.208	0.208	
Total Time Burden	98,398	99,945	101,517	103,114	104,736	507,710
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Costs to Trade	\$7,101,389	\$7,213,034	\$7,326,466	\$7,441,716	\$7,558,815	\$36,641,420

Trade Member Miscellaneous Costs

This proposed rule would also require outbound vessel carriers to submit the CBP Form 1300 (or electronic equivalent) requesting clearance two hours prior to the departure of the vessel from each port. This proposed rule authorizes the use of an electronic version of the CBP Form 1300 but would not eliminate the use of the paper CBP Form 1300. Outbound vessel carriers would be able to decide which version of the CBP Form 1300 to submit based on what works best for their business. Prior to this proposed rule CBP already requires outbound vessel carriers to submit the CBP Form 1300 prior to being granted clearance to depart a U.S. port. CBP does not anticipate that requiring this form two hours prior to departure would result in any additional costs to outbound vessel carriers. CBP expects that the time burden to complete the CBP Form 1300 would not change as a result of this proposed rule. Additionally, since this proposed rule would require that all export manifest data be submitted to CBP at least two hours prior to the loading of cargo onto vessels, outbound vessel carriers would have access to all the data and information needed to complete and submit to CBP the CBP Form 1300 for vessel clearance two hours prior to departure of a vessel. Therefore, CBP does not expect that this requirement would add any costs to carriers. CBP requests comment on the costs to trade members to provide the CBP Form 1300 two hours prior to

departure as a result of this proposed rule.

In order for CBP to effectively conduct proper cargo safety and security assessments on U.S. exports in the sea environment, it is imperative that CBP obtains timely and sufficient data prior to loading cargo in order to review and conduct risk assessment to identify high-risk shipments and inspect cargo effectively. In this proposed rule CBP would require the complete manifest data for some exports four days earlier in the export process when compared to the baseline where most export manifest data is provided no later than four days post departure. The new deadlines imposed by this proposed rule would result in a major change to the export process affecting outbound vessel carriers, other trade members, and exporters. Outbound vessel carriers have expressed concerns about CBP requiring pre-departure export manifest data due to outbound vessel carriers' ability to track down certain required data elements from other trade members early enough to meet the deadlines. Outbound vessel carriers do have some data available early in the export transaction process (including transportation data elements); however, outbound vessel carriers often rely entirely on other trade members to provide most of the specific cargo data needed to submit a completed export manifest in the sea environment. In the baseline CBP notes that the majority of export manifest cargo data is usually provided to outbound vessel carriers

from other trade members within 24 hours post departure, but it may take up to 4 days for outbound vessel carriers to obtain all the cargo data necessary to complete the manifest.⁸⁶ CBP expects that outbound vessel carriers and other trade members could need to make significant adjustments to business practices and would likely need to cooperate in order to provide the required export manifest data to CBP earlier in the export process. Additionally, if other trade members have the export manifest data elements available but are reluctant for any reason to provide the data to outbound vessel carriers earlier in the export process those trade members would have the option to provide that data directly to CBP via ACE. CBP does not have data available to estimate these costs, nor could trade members provide any estimates but feedback from trade members suggests that they could be significant.⁸⁷ CBP requests comment on

⁸⁶ Based on feedback CBP acquired from Trade members which stated in most cases when a vessel departs around 90% of export manifest data could be submitted within 24 hours of departure from the U.S. port of export, with the remaining 10% of manifest data gradually becoming available over the next 72 hours (days 2–4 post departure). Data obtained in January and February 2023.

⁸⁷ CBP requested feedback from Trade members on the potential costs from adjusting business practices to meet the new export manifest data deadlines imposed by this proposed rule. Trade members suggested that there could be significant costs but were unable to provide additional details on the costs for such adjustments to business practices or if this would be a one-time adjustment

the costs to trade members to adjust business practices in order to report the data on the timeframe required by the rule.

Although these costs could be significant CBP notes that as electronic data requirements are becoming more widespread in global trade it is likely that the required vessel EEM data elements would be available early enough in the export process to meet the deadlines imposed by CBP in this proposed rule. There are a number of countries that require import manifest data at least 24 hours prior to departure from a U.S. port to a foreign port.⁸⁸ These countries include major trading partners such as Canada, China, the European Union, Israel, Japan, Mexico, South Africa, South Korea, and Turkey.

CBP notes that as outbound vessel carriers and other trade members provide this import manifest data to foreign countries as part of the import requirements these data elements are very similar to the export manifest data elements required in this proposed rule. Therefore, CBP expects that the data elements submitted for foreign country import requirements should be available to provide for U.S. export requirements within the deadlines of this proposed rule. According to CBP calculations, in 2023, approximately 60 percent of all U.S. export trade value (by dollar amount) was exported to a country that requires import manifest data be provided at least 24 hours prior to the departure of the vessel from the United States.⁸⁹

Additionally, under the baseline CBP requires outbound vessel carriers to submit complete export manifest data prior to departure depending on the country to which the export is being shipped. According to CBP calculations, approximately eight percent of all U.S.

export trade value (by dollar amount) is exported to countries for which CBP already requires complete export manifest data prior to departure from the U.S. port of export.⁹⁰ Considering the U.S. exports sent to countries that require their own import manifest data and exports sent to countries that the U.S. requires the export manifest data prior to departure, approximately 68% of all U.S. export trade value (by dollar amount) prior to this proposed rule likely have all the export manifest data elements already provided pre-departure either as a foreign country import requirement or a current U.S. export requirement.⁹¹

Therefore prior to this proposed rule it is likely that outbound vessel carriers and other trade members already have business practices established to obtain and provide manifest data prior to departure for the majority of cargo departing the United States. CBP expects that because outbound vessel carriers and other trade members are already providing this data for many U.S. exports, they may have already established a process to obtain and provide this data earlier in the export process. Additionally, CBP believes based on feedback from trade members that it is likely that all the export manifest data elements required by the vessel EEM would be accessible to either outbound vessel carriers or other trade members involved in the export process early enough to provide the data to CBP within the deadline imposed by this proposed rule. In order for outbound vessel carriers and other trade members to meet the imposed deadlines for export manifest data according to this proposed rule for 100 percent of U.S. exports, CBP does expect there to be costs associated with adjusting their business practices. CBP does not know these costs and was unable to obtain an estimate for the costs to the average trade member to adjust business practices. CBP requests feedback and

comments on the potential costs to outbound vessel carriers and other trade members when adjusting business practices as result of having to provide the required export manifest data electronically to CBP within the deadlines imposed by this proposed rule.

The transition from a paper form process to an electronic process could also force trade members that provide export manifest data to the carriers or directly to CBP to adjust business practices. CBP expects any such costs to adjusting business practices when transitioning from a paper to electronic data process would be minimal and should not have a large effect on trade members, specifically because trade members likely already have such practices developed to provide manifest data for imports that can be reused to provide export manifest data to CBP.⁹² CBP requests feedback and comments on the potential costs to trade members from adjusting business practices while transitioning from a paper form process to an electronic process.

This proposed rule requires trade members providing the EEM data to have a bond on file with CBP. Carriers and other potential filers generally are all subject to other bond requirements that would qualify them to submit EEM data to CBP.⁹³ Therefore, CBP expects that any costs to outbound vessel carriers or other trade members from requiring a bond to provide export manifest data electronically to CBP would be negligible. Outbound vessel carriers and other trade members could also incur some costs to meet the requirements of this proposed rule because of the requirement to have someone available to respond to questions and issues that may arise from CBP's review of export manifest data transmitted. CBP anticipates that participants would not require additional staffing because trade members typically have someone working for other business operations

cost or ongoing adjustment costs. Data obtained in January and February 2023.

⁸⁸ Information provided from CBP's Cargo Security, Carriers and Restricted Merchandise Branch subject matter expert, on March 31, 2023.

⁸⁹ CBP calculations based on a list of countries that have their own import manifest data requirements for data to be submitted 24 hours prior to departure from the U.S. port of export (Canada [24–96 hours prior to loading or arrival of goods in Canadian ports of entry for import cargo, depending on type and origin of goods; CBP assumes that Canadian imports from the U.S. require import manifest data 24 hours prior to departure], China, EU countries, Israel, Japan, Mexico, South Africa, South Korea and Turkey). This list was provided by CBP's Cargo Security, Carriers and Restricted Merchandise Branch subject matter expert on March 31, 2023. CBP obtained the total U.S. export trade value for all U.S. exports compared to the export value to countries that require import export manifest data 24 hours prior to departure from the U.S. CBP obtained 2023 (most recent available) export trade value from Census Bureau USA Trade Data <https://usatrade.census.gov/data>. Accessed on March 26, 2024.

⁹⁰ CBP calculations based on the list of existing countries from 19 CFR 4.75 that CBP requires outbound vessel carriers to provide complete export manifest data prior to departure; the current countries include China, Albania, Cambodia, Cuba, Estonia, Hungary, Iran, Iraq, Laos, Latvia, Libya, Lithuania, North Korea, Romania, Yemen, and Vietnam. To calculate the percent of total export trade value to these countries CBP used the export trade value for these countries compared to the trade value for all U.S. exports in 2023 (most recent year available). Export trade value data obtained from Census Bureau USA Trade Data <https://usatrade.census.gov/data>. Accessed on March 26, 2024.

⁹¹ Some of the countries fall into both categories, requirements from the importing country and requirements from the United States to export to certain countries; CBP only counted the trade value to those countries once in the overall calculation.

⁹² CBP requested feedback from Trade members on the potential costs from adjusting business practices specifically from transitioning from paper to electronic data submission as a result of this proposed rule. Trade members suggested that there could be some costs but were unable to provide additional details on the costs for such adjustments to business practices or if this would be a one-time adjustment cost or ongoing adjustment costs. Data obtained in January and February 2023.

⁹³ CBP anticipates that any of the following bonds would be appropriate, CBP Basic Importation and Entry Bond containing the provisions found in section 113.62 of 19 CFR, a Basic Custodial Bond containing the provisions found in 113.63 of 19 CFR, or an International Carrier Bond containing the provisions found in section 113.64 of 19 CFR.

that can respond to CBP questions and issues.

Outbound vessel carriers and other trade members may also be subject to penalties and/or claims for liquidated damages of \$5,000 for each violation and up to a maximum of \$100,000 per departure for noncompliance. These monetary claims imposed by CBP are a compliance tool and CBP anticipates that there would be high levels of compliance from participants during the regulatory period such that violations that result in penalties would likely not be a common occurrence. CBP acknowledges that compliance is CBP's primary goal and CBP plans to work with outbound vessel carriers and other trade members to ensure they provide the appropriate export manifest data in a timely manner and CBP will have

flexible enforcement for a period of time after the rule goes into effect to give the trade the time it needs to be able to comply with the rule. While CBP plans to issue penalties for repeated willful noncompliance, its expectation is to limit penalties until the trade is able to comply.⁹⁴ Additional costs could be placed on these parties as a result of this proposed rule should CBP assess claims against outbound vessel carriers or other trade members. However, CBP believes these costs would not be incurred if parties are compliant.

Total Costs

Given CBP's primary estimate for systems costs to trade, CBP expects that total costs from this proposed rule would be approximately \$253 million during the regulatory period or on

average around \$51 million annually. According to CBP estimates, CBP would incur a total cost of around \$5.0 million or around \$1.0 million annually. Meanwhile CBP anticipates that trade members would experience the majority of the costs during the regulatory period incurring around \$247 million or on average around \$50 million annually. Table 22 displays CBP's estimates for total costs during each year of the regulatory period as a result of this proposed rule. CBP requests feedback and comments on the regulatory period vessel EEM costs to outbound vessel carriers and other trade members discussed above and any other cost to outbound vessel carriers and other trade members that CBP did not address in this analysis.

Table 22. Total Estimated Costs during Regulatory Period 2026-2030 (cost in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
CBP Systems Costs	\$968,523	\$984,301	\$1,000,342	\$1,016,649	\$1,033,227	\$5,003,042
CBP Time Burden Costs	\$800,270	\$812,851	\$825,634	\$838,622	\$851,818	\$4,129,195
Total CBP Costs	\$968,523	\$984,301	\$1,000,342	\$1,016,649	\$1,033,227	\$5,003,042
Trade Systems Costs	\$17,500,000	\$17,500,000	\$17,500,000	\$17,500,000	\$17,500,000	\$87,500,000
Trade Providing Vessel EEM Data	\$23,979,532	\$24,356,527	\$24,739,558	\$25,128,727	\$25,524,138	\$123,728,482
Trade Resolving CBP Issued Holds	\$7,101,389	\$7,213,034	\$7,326,466	\$7,441,716	\$7,558,815	\$36,641,420
Total Costs to Trade	\$48,580,921	\$49,069,561	\$49,566,025	\$50,070,443	\$50,582,952	\$247,869,902
Total Overall Costs	\$49,549,443	\$50,053,863	\$50,566,366	\$51,087,092	\$51,616,180	\$252,872,944

Cost Savings

Trade Member Opportunity Cost Savings

CBP anticipates that this proposed rule would also result in cost savings to trade members during the regulatory period. Obtaining and reviewing export manifest data electronically is a more efficient process when compared to working with paper forms. CBP expects that outbound vessel carriers would experience time savings from providing export manifest data electronically to

CBP during vessel EEM when compared to the baseline process, but the amount of time savings depends on if the outbound vessel carrier was participating in the VTM prior to the proposed rule.

As discussed in the pilot period costs savings section, there were two outbound vessel carrier participants in the vessel EEM test that were providing export data to CBP through VTM prior to participating in the vessel EEM test. In addition to the vessel EEM data transmissions, CBP also continued to

receive electronic data transmissions via VTM during the pilot period from one additional outbound vessel carrier. When outbound vessel carriers switched from providing VTM data to providing vessel EEM data these outbound vessel carriers experienced some time savings because, unlike VTM data, vessel EEM data does not require the outbound vessel carriers to submit and match booking data with the export manifest data. During the regulatory period CBP uses the same estimate that CBP used

⁹⁴ Information provided by CBP's Cargo and Conveyance Security, Office of Field Operations,

subject matter expert, for EEM programs, while

there is a possibility of penalties when a violation occurs, compliance is the goal, on May 31, 2024.

during the pilot period for outbound vessel carriers that switched from VTM to vessel EEM. CBP estimates that this transition results in a time savings to the outbound vessel carrier of approximately 30 minutes (0.5 hours) on average per departing vessel.⁹⁵

Table 6 above shows CBP’s estimates for the expected number of vessel EEM data transmissions submitted by VTM participants and the total expected number of vessel EEM data transmissions during each year of the regulatory period. To estimate the number of vessel departures that would experience this time savings during the regulatory period CBP divided the number of expected vessel EEM data transmissions submitted by VTM participants each year (716,749) by the number of total expected vessel EEM

data transmissions each year of the regulatory period. Similar to the pilot period calculations, CBP assumes that outbound vessel carriers participating in VTM prior to this proposed rule often export cargo using self-propelled dry cargo vessels. CBP assumes that VTM data transmissions were only associated with self-propelled dry cargo vessels and that data transmissions related to self-propelled dry cargo vessels are equally distributed.

CBP already provided its estimate for the total number of future self-propelled dry cargo vessel departures that will occur each year during the pilot period (see Table 3). CBP multiplied the percent of estimated future vessel EEM data transmissions that would have been VTM data transmissions by the estimated number of self-propelled dry

cargo vessel departures each year of the regulatory period to provide an estimate for the number of vessel departures that would experience a time savings from no longer requiring outbound vessel carriers to submit and match the booking data with export manifest cargo data. Overall CBP estimates that approximately 23,028 vessel departures would experience this time savings as a result of this proposed rule. Table 23 displays CBP’s estimates for vessel EEM data transmissions, VTM data transmissions that would switch to vessel EEM transmissions, and the VTM vessel departures associated with VTM data transmissions that would experience a time savings as a result of this proposed rule.

Table 23. Estimated Number of Vessel EEM Transmissions, VTM Transmissions and VTM Vessel Departures Absent the Proposed Rule during Regulatory Period 2026- 2030

	2026	2027	2028	2029	2030	Total
EEM Data Transmissions	11,671,431	11,854,924	12,041,355	12,230,773	12,423,229	60,221,711
VTM Transmissions	716,749	716,749	716,749	716,749	716,749	3,583,745
Ratio of VTM to EEM	6.14%	6.05%	5.95%	5.86%	5.77%	
Self-Propelled Dry Cargo Vessel Departures	75,392	76,376	77,373	78,383	79,406	386,930
Vessel VTM Departures	4,630	4,618	4,606	4,593	4,581	23,028

To estimate the time savings to outbound vessel carriers when switching from VTM data transmissions to vessel EEM data transmission, CBP multiplied the expected time savings per VTM vessel departure (0.5 hours) by the number of VTM vessel departures each year. CBP estimates that during the regulatory period outbound vessel carriers would experience a time savings of approximately 11,514 hours

from no longer being required to submit and match booking data with the export manifest data when switching from VTM to vessel EEM data transmission. To estimate the cost savings to outbound vessel carriers CBP multiplied the time savings each year by the average hourly loaded wage rate for vessel operators (\$72.17). CBP estimates that during the regulatory period vessel carriers would experience a cost savings

of approximately \$830,958 or on average \$166,192 annually. Table 24 shows CBP’s calculations for time and cost savings to outbound vessel carriers each year during the regulatory period when switching from VTM data transmission to vessel EEM data transmission as a result of this proposed rule.

⁹⁵ This estimate was based on data obtained from feedback from Trade members on the effects of

providing EEM to CBP via ACE. Data was obtained in December 2022 and February 2023.

Table 24. Estimated Time and Cost Savings to Vessel Carriers Switching from VTM to EEM Data Transmission during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel EEM Departures	4,630	4,618	4,606	4,593	4,581	23,028
Time Savings per Departure	0.5	0.5	0.5	0.5	0.5	
Total Time Savings	2,315	2,309	2,303	2,297	2,291	11,514
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Cost Savings	\$167,068	\$166,629	\$166,191	\$165,753	\$165,316	\$830,958

CBP expects that other outbound vessel carriers that did not provide VTM would also experience time savings as a result of this proposed rule. CBP would require outbound vessel carriers to provide EEM data to CBP prior to departure, eliminating the need for outbound vessel carriers to submit the paper CBP Form 1302A. CBP notes that outbound vessel carriers that were participating in VTM prior to this proposed rule were providing electronic export data to CBP in lieu of the paper CBP Form 1302A. Therefore, CBP expects that only outbound vessel carriers that were submitting the paper CBP Form 1302A prior to this proposed rule would experience a time savings associated with no longer having to provide that form.

To estimate the number of CBP Form 1302As that outbound vessel carriers or other trade members would no longer need to submit as a result of this

proposed rule, CBP used the total estimated number of vessel EEM data transmissions and subtracted the estimated number of VTM transmissions each year (see Table 6). CBP anticipates that prior to this proposed rule the time burden to outbound vessel carriers and other trade members to complete and submit a single paper CBP Form 1302A to CBP is approximately three minutes (0.05 hours).⁹⁶ As a result of this proposed rule, eliminating the CBP Form 1302A would result in outbound vessel carriers and other trade members experiencing a three-minute time savings for each CBP Form 1302A that would have been submitted absent this proposed rule.

CBP calculated the time savings to outbound vessel carriers and other trade members by multiplying the expected number of CBP Form 1302As eliminated each year by the time savings per CBP Form 1302A (0.05 hours). During the

regulatory period CBP anticipates that outbound vessel carriers and other trade members would experience a time savings of approximately 2,831,898 million hours or on average 566,380 annually. CBP calculated the cost savings by multiplying the time savings during each year of the regulatory period by the average hourly loaded wage rate for vessel operators (\$72.17).

CBP expects that outbound vessel carriers and other trade members would experience a cost savings of approximately \$204 million or on average \$41 million annually from no longer submitting CBP Form 1302As when exporting cargo in the sea environment. Table 25 displays CBP's estimates for the number of CBP Form 1302As that would be eliminated as a result of this proposed rule and the time and cost savings to outbound vessel carriers during each year of the regulatory period.

Table 25. Estimated Time and Cost Savings to Vessel Carriers and Other Trade Members from Eliminating Paper CBP 1302A during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
EEM Data Transmissions	11,671,431	11,854,924	12,041,355	12,230,773	12,423,229	60,221,711
VTM Transmissions	716,749	716,749	716,749	716,749	716,749	3,583,745
CBP Form 1302A	10,954,682	11,138,175	11,324,606	11,514,024	11,706,480	56,637,966
Time Savings per CBP Form 1302A	0.05	0.05	0.05	0.05	0.05	
Total Time Savings	547,734	556,909	566,230	575,701	585,324	2,831,898
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Cost Savings	\$39,529,969	\$40,192,105	\$40,864,839	\$41,548,354	\$42,242,833	\$204,378,100

As discussed earlier, during the baseline when CBP identifies a high-risk cargo or container that has already been loaded and the vessel has departed the

U.S. port of export CBP can issue a request that the outbound vessel carrier return the container for examination. This proposed rule would require EEM

data prior to cargo being loaded onto vessels allowing CBP sufficient time to use ATS to conduct risk assessment to identify high-risk cargo and containers

⁹⁶ CBP referenced the supporting statement for OMB No 1651-0001 Cargo Manifest Declaration, Stow Plan, Container Status Messages and Importer

Security Filing. According to the supporting statement CBP expects the time burden to trade when submitting a CBP Form 1302A is

approximately three minutes. Accessed on April 10, 2023. https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202101-1651-001.

and issue holds preventing cargo from being loaded onto vessels until holds are resolved. Ideally, CBP would be able to conduct review of export manifest data and any examinations of high-risk cargo or containers prior to loading cargo and containers onto vessels. Therefore, CBP would no longer need to make requests for returned cargo and requests for discharges after vessels have departed a U.S. port of export. CBP anticipates eliminating cargo returns and discharges would generate significant time and cost savings to outbound vessel carriers.

When a request for return is issued by CBP, the outbound vessel carrier usually ships the cargo or container back to the United States after foreign delivery and upon the vessel's return to the United States. Additionally, if a vessel has already departed the U.S. port of export and the vessel stops at a second U.S. port, CBP can request the outbound vessel carrier to discharge that cargo or container at that second port for CBP to conduct an examination. In either scenario, returning a container from a foreign port or discharging at a second U.S. port results in additional costs to outbound vessel carriers and other trade members. The costs to trade for returning a container from a foreign port can vary significantly depending on the outbound vessel carrier, the foreign port location and if the cargo was unloaded and released at the foreign port. CBP estimates that the average shipping and freight costs to trade for returning a high-risk cargo or container for CBP to conduct an examination is approximately \$4,290.⁹⁷ Returning cargo or a container also requires additional coordination and documentation between outbound vessel carriers and other trade members. In addition to the freight costs, CBP estimates that returning cargo or a container from a foreign port results in a time burden to trade members staff of approximately 12.6 hours on average for each returned cargo or container.⁹⁸

Costs to trade members when discharging cargo or a container at a second U.S. port can also vary widely depending on if the cargo or container is easily accessible to remove from the vessel. If the high-risk cargo or container is on a self-propelled dry cargo vessel

and stowed underneath the hatch and other containers are on top of the hatch, removing the high-risk cargo or container would involve a significant amount of work to lift and move numerous containers in order to discharge the high-risk cargo or container. CBP estimates that on average it costs trade approximately \$1,261 to access and discharge a high-risk cargo or container at a second U.S. port.⁹⁹ Discharging also places an extra time burden on trade member staff to coordinate and document the moving of containers if necessary and discharging of the high-risk cargo or container. CBP estimates that the average time burden incurred by trade member staff to coordinate and document each discharged cargo or container would be approximately three hours.¹⁰⁰

CBP does not track the number of requests for returns or discharges when CBP identifies a high-risk cargo or containers post departure. Therefore, to determine how frequently these requests occur and to estimate how many returns and discharges CBP could avoid by this proposed rule, CBP requested input from trade members on how often they receive these requests from CBP. Based on the feedback obtained, CBP notes that the number requests can vary significantly by outbound vessel carrier and by the type of cargo.¹⁰¹ CBP obtained data on a subset of vessel departures in 2022 and the estimated number of requests for return and discharge to estimate that on average a request for return was issued for 2.0 percent of vessel departures and a discharge was issued for 2.6 percent of vessel departures.¹⁰² To estimate the

total number of CBP requests for returns and discharges during the regulatory period CBP multiplied the average percent of returns and discharges per vessel departure by the total number of expected vessel departures each year (see Table 4). CBP assumes that the proposed rule would eliminate all of the estimated number of CBP requests for returns and discharges because export manifest data provided prior to loading of the cargo would allow CBP to prevent high-risk cargo and containers from being loaded onto vessels.

CBP expects that during the regulatory period outbound vessel carriers would have approximately 11,307 requests for return eliminated by this rule, or on average 2,261 annually. CBP calculated the cost savings associated with eliminating CBP requests for returns by multiplying the estimated number of requests for return that would be eliminated each year by the average freight cost to trade for returning cargo or a container (\$4,290). CBP estimates that the cost savings to trade would be around \$48 million or on average \$9.7 million annually. In addition to the freight costs to return the cargo and containers back to the United States for examination, trade members incurred time burdens to document and coordinate the return. To estimate the time burden to trade member staff to conduct returns CBP multiplied the total number of returns each year by the estimated time burden per return (12.6 hours). CBP expects that trade members staff would incur a time savings of approximately 142,393 hours during the regulatory period or on average 28,479 hours annually. CBP estimated the cost savings to trade members from eliminating requests for returning cargo and containers by multiplying the time savings by the hourly loaded wage rate for vessel operators (\$72.17). CBP anticipates that this proposed rule would reduce time burden to trade member staff resulting in cost savings of around \$10.3 million during the regulatory period or on average \$2.1 million each year. In total CBP estimates that eliminating the requests for returns would result in a total cost savings to trade of approximately \$58.8 million or on average \$11.8 million annually. Table 26 displays CBP estimates for time and cost savings from no longer requesting cargo and container returns from a foreign port during each year of the regulatory period.

departure or are evenly distributed across all vessel departures.

⁹⁷ CBP calculations based on feedback obtained from Trade members on the potential costs associated with responding to a return request from CBP. Data was obtained in December 2022 and February 2023.

⁹⁸ CBP calculations based on feedback obtained from Trade members on the time burdens associated with responding to a return request from CBP. Data was obtained in December 2022 and February 2023.

⁹⁹ CBP calculations based on feedback obtained from Trade members on the costs associated with responding to discharge requests from CBP. Data was obtained in December 2022 and February 2023.

¹⁰⁰ CBP calculations based on feedback obtained from Trade members on the time burden associated with responding to discharge requests from CBP. Data was obtained in December 2022 and February 2023.

¹⁰¹ Information obtained from Trade members on the frequency of requests for returns and discharges by CBP. Data was obtained in December 2022 and February 2023. CBP notes that certain types of cargo are more prone to having returns or discharges issued by CBP, for example, exported autos receive more frequent CBP requests for return or discharge often due to high rates of automobile theft.

¹⁰² CBP used internal data on the number of vessel departures for only the trade members that provided feedback on annual returns and discharges to determine the percentages of returns and discharges by vessel departure. CBP notes that although a return and discharge is issued for a cargo or container and a vessel departing could have more than one request for return or discharge as it is carrying multiple cargo or containers, regardless of if this is the case the total overall number of returns and discharges is what CBP aims to capture and for purpose of this analysis CBP is not concerned if all returns and discharges are issued to a single vessel

Table 26. Estimated Time and Cost Savings to Trade from Eliminating CBP Requests for Cargo Returns during Regulatory Period 2026-2030 (time in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel Departures	106,781	109,541	112,415	115,408	118,526	562,671
% of Return Request by Departures	2.0%	2.0%	2.0%	2.0%	2.0%	
Total Returns	2,146	2,201	2,259	2,319	2,382	11,307
Cost per Return	\$4,290	\$4,290	\$4,290	\$4,290	\$4,290	
Costs Saved	\$9,205,839	\$9,443,820	\$9,691,574	\$9,949,605	\$10,218,446	\$48,509,284
Time Burden per Return	12.6	12.6	12.6	12.6	12.6	
Total Time Savings	27,023	27,721	28,448	29,206	29,995	142,393
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Time Cost Savings	\$1,950,215	\$2,000,630	\$2,053,115	\$2,107,778	\$2,164,731	\$10,276,469
Total Cost Savings	\$11,156,054	\$11,444,450	\$11,744,689	\$12,057,383	\$12,383,177	\$58,785,753

To estimate the number of requests for discharges that would be eliminated during the regulatory period as a result of this proposed rule, CBP multiplied the expected average number of discharges per vessel departure (2.6%) by the total number of vessel departures each year of the regulatory period (see Table 4). CBP expects that during the regulatory period this proposed rule would eliminate approximately 14,488 discharges or on average 2,898 annually. CBP calculated the cost savings to trade from CBP no longer requesting discharges as a result of this proposed rule by multiplying the total discharges each year by the estimated average cost incurred by trade members to discharge a high-risk cargo or container (\$1,261). CBP anticipates that during the regulatory period, trade members would

experience a cost savings of approximately \$18.3 million or on average \$3.6 million from no longer discharging cargo or containers for CBP to conduct examinations.

CBP also expects that trade members would avoid time burdens associated with documenting and coordinating discharges. During the regulatory period CBP estimates this time saving by multiplying the estimated number of discharges eliminated each year by the average time burden (three hours) to trade members when documenting and coordinating each discharge. CBP calculated that trade would experience a time savings of approximately 43,465 hours during the regulatory period or on average 8,693 hours annually from no longer conducting discharges. To monetize these time savings CBP used the hourly loaded wage rate for vessel

operators (\$72.17) multiplied by the expected time savings each year during the regulatory period. CBP estimates that over the course of the regulatory period trade would experience cost savings of around \$3.1 million or on average \$0.63 million annually from avoiding the time burdens associated with conducting discharges. In total, CBP estimates that during the regulatory period trade members would experience cost savings of around \$21.4 million or on average \$4.3 million annually, from no longer discharging high-risk cargo and containers at a second U.S. port. Table 27 displays CBP's estimates for the time and cost savings to trade during each year of the regulatory period from this proposed rule which would avoid the costs of discharging high-risk cargo and containers at a second U.S. port.

Table 27. Estimated Time and Cost Savings to Trade from Eliminating CBP Requests for Cargo Discharges during Regulatory Period 2026-2030 (time burden in hours, costs in undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Vessel Departures	106,781	109,541	112,415	115,408	118,526	562,671
% of Discharges by Departures	2.6%	2.6%	2.6%	2.6%	2.6%	
Total Discharges	2,750	2,821	2,895	2,972	3,052	14,488
Costs per Discharge	\$1,261	\$1,261	\$1,261	\$1,261	\$1,261	
Cost Saved	\$3,466,883	\$3,556,506	\$3,649,809	\$3,746,982	\$3,848,227	\$18,268,406
Time Burden per Discharge	3	3	3	3	3	
Total Time Savings	8,249	8,462	8,684	8,915	9,156	43,465
Wage Rate	\$72.17	\$72.17	\$72.17	\$72.17	\$72.17	
Time Burden Cost Savings	\$595,301	\$610,690	\$626,711	\$643,397	\$660,782	\$3,136,882
Total Cost Savings	\$4,062,184	\$4,167,196	\$4,276,520	\$4,390,379	\$4,509,009	\$21,405,288

Trade Member Miscellaneous Cost Savings

Additionally, CBP anticipates that moving to electronic data transmission of export manifest data would reduce the space required to store and file paper manifest documents, generating savings to outbound vessel carriers and other trade members. Unfortunately, CBP does not have data available to provide a quantifiable estimate for the savings to trade members from reduced

storage space as a result of eliminating paper form manifest documents but based on feedback from trade members CBP does not consider the cost savings to be substantial.

Trade Member Total Cost Savings

In total, CBP estimates that this proposed rule would result in significant cost savings to trade. During the regulatory period CBP estimates that total cost savings to trade members would be approximately \$285 million or

on average \$57 million annually. Table 28 displays CBP's estimate for total cost savings that trade members would experience as a result of this proposed rule for each year of the regulatory period. CBP requests feedback and comments from outbound vessel carriers and other trade members on CBP's estimates for the cost savings to trade as a result of this proposed rule and any other potential cost savings from this proposed rule that CBP may not have included in this analysis.

Table 28. Estimated Time and Cost Savings to Trade from Eliminating CBP Requests for Cargo Discharges during Regulatory Period 2026-2030 (time in hours, costs in millions of undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Switching to EEM Data	\$39.70	\$40.36	\$41.03	\$41.71	\$42.41	\$205.21
Eliminating Returns	\$11.16	\$11.44	\$11.74	\$12.06	\$12.38	\$58.79
Eliminating Discharges	\$4.06	\$4.17	\$4.28	\$4.39	\$4.51	\$21.41
Total Cost Savings	\$54.92	\$55.97	\$57.05	\$58.16	\$59.30	\$285.40

Benefits

CBP expects that CBP and most trade members involved in exporting goods from the United States in the sea environment and other Federal government agencies would likely experience benefits as result of this proposed rule during the regulatory period. CBP does not have the data available to quantify these benefits and therefore will discuss those benefits qualitatively. A primary benefit of

requiring pre-departure EEM data would be an improvement in CBP's security efforts and its ability to use CBP's ATS to conduct risk assessment for all sea export cargo prior to departing the United States, while also minimizing the disruption to the export process. This proposed rule would assist CBP in preventing illegal, dangerous, and hazardous cargo from being exported out of the United States and would allow CBP to ensure cargo safety and

security for all exports in the sea environment. As discussed earlier, if this proposed rule identified high-risk cargo and containers prior to loading onto vessels then CBP would no longer need to request returns and discharges. According to CBP calculations this proposed rule could eliminate approximately 11,307 requests for cargo returns and around 14,488 requests for discharges during the regulatory period. In total this proposed rule could prevent

25,795 high-risk cargo shipments or containers from being loaded onto vessels attempting to depart the United States until CBP can conduct a proper examination during the course of the regulatory period.

Additionally, transitioning to electronic data would reduce the usage of paper for all parties involved and bring the outbound sea export process level with existing inbound sea import processing technology. CBP anticipates after transitioning to electronic data some trade members would also be able to generate efficiencies by adjusting their IT systems to automate some of the data transmission process compared to the baseline scenario. This has been the experience the trade has had with the Importer Security Filing, which has become more automated over time, and CBP expects a similar shift here. The deadlines for submitting export manifest data and the gained efficiencies from moving to electronic data transmission using an integrated system, from paper forms, provides CBP more time to review the necessary detailed export data prior to a vessel's departure, allowing CBP officers to allocate more time to mission-critical activities. CBP also anticipates this proposed rule would generate benefits to other Federal government agencies through improved coordination and communication between CBP and the Department of Commerce and other government agencies with export jurisdiction, while enforcing U.S. export laws and regulations. In addition, CBP would implement the Trade Act authority in the sea environment, which authorizes

CBP to establish regulations providing for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments.

Net Impact of the Proposed Rule

CBP expects that during the regulatory period this proposed rule would result in overall net cost savings and would also generate meaningful unquantified security benefits. CBP notes that lack of data available prevented CBP from providing exact estimates for some of the potential costs and cost savings from the implementation of vessel EEM and therefore the actual net cost savings could be more or less than what CBP's primary estimates project in this analysis. CBP acknowledges that if a greater number of other trade members elect to participate directly in vessel EEM, than what CBP anticipates, there would be significantly higher IT systems costs to trade than what CBP estimated in the analysis for this proposed rule. However, CBP notes that directly participating in vessel EEM by other trade members is voluntary and CBP expects that other trade members would only elect to directly participate if it were beneficial to their company and the benefits or cost savings outweigh the costs, meaning that if other trade members voluntarily participate, the cost savings of the rule would increase by more than the costs of the rule. Additionally, CBP was unable to provide an estimate for the costs to outbound vessel carriers and other trade members to adjust business practices in

order to provide pre-departure export manifest data electronically to CBP for all exports in the sea environment within the required deadlines imposed by this proposed rule.

Additionally, CBP anticipates that this proposed rule would result in added benefits, but CBP was unable to quantify these benefits. This proposed rule would improve CBP's cargo safety and security efforts by using ATS to conduct risk assessment measures on export manifest data for all exports in the sea environment prior to loading the cargo onto vessels. CBP anticipates that this proposed rule would help to prevent smuggling and improve CBP's efforts to ensure cargo safety and security for all exports in the sea environment. As a result of this proposed rule, CBP would implement the Trade Act authority for exports in the sea environment.

CBP estimates that, during the regulatory period, CBP, outbound vessel carriers, and other trade members would incur costs of approximately \$252 million or an average of \$51 million per year. Meanwhile, CBP estimates a total cost savings to CBP, outbound vessel carriers and other trade members of approximately \$285 million during the regulatory period, or an average of \$57 million per year. According to CBP estimates the proposed rule would result in a net cost savings of approximately \$32 million, or an average of \$6.5 million per year. Table 29 displays CBP's estimates for costs and cost savings to CBP and trade members during each year of the regulatory period.

Table 29. Estimated Total Costs and Cost Savings from the Proposed Rule during Regulatory Period 2026-2030 (costs in millions of undiscounted 2023 U.S. dollars)

	2026	2027	2028	2029	2030	Total
Cost						
CBP Systems	\$0.17	\$0.17	\$0.17	\$0.18	\$0.18	\$0.87
CBP Time Burden	\$0.80	\$0.81	\$0.83	\$0.84	\$0.85	\$4.13
Trade Systems	\$17.50	\$17.50	\$17.50	\$17.50	\$17.50	\$87.50
Trade Time Burden	\$31.08	\$31.57	\$32.07	\$32.57	\$33.08	\$160.37
Total Costs	\$49.55	\$50.05	\$50.57	\$51.09	\$51.62	\$252.87
Cost Savings						
Trade Switching to EEM Data	\$39.70	\$40.36	\$41.03	\$41.71	\$42.41	\$205.21
Trade Eliminating Returns	\$11.16	\$11.44	\$11.74	\$12.06	\$12.38	\$58.79
Trade Eliminating Discharges	\$4.06	\$4.17	\$4.28	\$4.39	\$4.51	\$21.41
Total Cost Savings	\$54.92	\$55.97	\$57.05	\$58.16	\$59.30	\$285.40
Net Cost Savings	\$5.37	\$5.92	\$6.49	\$7.07	\$7.68	\$32.53

Table 30. Total Monetized Present Value and Annualized Costs of Regulatory Period 2026-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Costs	\$231,477,000	\$207,079,811
Annualized Costs	\$50,544,061	\$50,504,839

Table 30 shows the discounted total quantified costs during the regulatory period from this proposed rule. As shown, the total costs over the five-year regulatory period of analysis range from

\$231 million (in 2023 U.S. dollars), using a three percent interest rate and \$207 million (in 2023 U.S. dollars) using a seven percent discount rate. Expected annualized costs from this

proposed rule are expected to be around \$50.5 million using a three and seven percent discount rate.

Table 31. Total Monetized Present Value and Annualized Cost Savings of Regulatory Period 2026-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost Savings	\$261,113,190	\$233,432,737
Annualized Cost Savings	\$57,015,259	\$56,932,072

Table 31 displays the discounted total quantified cost savings as a result of this proposed rule during the regulatory period. CBP’s primary estimates show that this proposed rule would provide

cost savings to outbound vessel carriers and other trade members ranging from \$261 million (2023 U.S. dollars) using a three percent discount rate to \$233 million (2023 U.S. dollars) using a seven

percent discount rate. Annualized cost savings from this proposed rule would be approximately \$57 million using both a three and seven percent discount rate.

Table 32. Total Monetized Present Value and Annualized Net Cost Savings of Regulatory Period 2026-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Net Cost Savings	\$29,636,191	\$26,352,926
Annualized Net Cost Savings	\$6,471,198	\$6,427,233

Table 32 displays CBP’s primary estimate for quantifiable net cost savings from the implementation of vessel EEM. As shown, CBP expects that this proposed rule would result in total net cost savings ranging from \$29.6 million (2023 U.S. dollars) using a three percent discount rate to \$26.3 million (2023 U.S. dollars) using a seven percent discount rate. CBP estimates that annualized net cost savings would be around \$6.5 million using a three percent discount rate and \$6.4 million using a seven percent discount rate.

Total Impact of the Proposed Vessel EEM Program

CBP anticipates that over the entire 16-year time period of analysis 2015–

2030, the proposed vessel EEM program would result in overall net cost savings compared to the baseline (before the vessel EEM test was introduced). Initially as the vessel EEM test was introduced, costs outweighed the cost savings, but CBP estimates that as the test expanded and after the proposed rule would be implemented, cost savings would far outweigh the costs incurred by this proposed rule. In addition, CBP expects that this proposed rule would generate meaningful unquantified security benefits after it is implemented as discussed above in the regulatory period net impact section. CBP estimates that between 2015–2030 the vessel EEM program would result in total costs of

\$259 million or on average \$16.2 million annually. Additionally, the vessel EEM program would result in total cost savings of \$286 million or on average \$19 million annually between 2016–2030.¹⁰³ CBP estimates that total net cost savings from the vessel EEM program during the period of analysis 2016–2030 would be \$27.4 million or on average \$1.7 million annually when compared to the baseline. Table 33 displays CBP’s estimates for total costs, cost savings and net cost savings as a result of this proposed rule from 2015–2030.

¹⁰³ CBP notes that 2015 did not provide any cost savings therefore the average for total cost savings was for the 2016–2030 time period.

Table 33. Estimated Cost, Cost Savings, and Net Cost Savings from Vessel EEM 2015-2030 (undiscounted 2023 U.S. dollars)

Year	Costs	Cost Savings	Net Cost Savings
2015	\$911,916		(\$911,916)
2016	\$209,386	\$32,788	(\$176,598)
2017	\$212,035	\$43,739	(\$168,296)
2018	\$214,733	\$50,256	(\$164,477)
2019	\$217,483	\$51,358	(\$166,125)
2020	\$220,285	\$55,752	(\$164,533)
2021	\$223,141	\$53,579	(\$169,562)
2022	\$226,051	\$68,203	(\$157,848)
2023	\$1,138,431	\$124,326	(\$1,014,105)
2024	\$1,141,452	\$124,013	(\$1,017,439)
2025	\$1,144,531	\$123,701	(\$1,020,830)
2026	\$49,549,443	\$54,915,275	\$5,365,831
2027	\$50,053,863	\$55,970,380	\$5,916,517
2028	\$50,566,366	\$57,052,240	\$6,485,874
2029	\$51,087,092	\$58,161,870	\$7,074,778
2030	\$51,616,180	\$59,300,334	\$7,684,154
Total	\$258,732,388	\$286,127,814	\$27,395,426
Average	\$16,170,774	\$19,075,188	\$1,712,214

Table 34. Total Monetized Present Value and Annualized Costs of Vessel EEM 2015-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost	\$171,972,123	\$102,069,791
Annualized Cost	\$13,690,847	\$10,804,868

Table 34 shows the discounted total quantified costs from the vessel EEM program from 2015–2030 compared to the baseline scenario. As shown, the total costs over the 16-year period of

analysis would range from \$172 million (2023 U.S. dollars) using a three percent discount rate to \$102 million (2023 U.S. dollars) using a seven percent discount rate. Expected total annualized costs

from this proposed rule are \$13.7 million using a three percent discount rate and \$10.8 million using a seven percent discount rate.

Table 35. Total Monetized Present Value and Annualized Cost Savings of Vessel EEM 2015-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Cost Savings	\$194,891,074	\$119,135,041
Annualized Cost Savings	\$15,515,444	\$12,611,355

Table 35 shows the discounted total quantified cost savings as a result of this proposed rule from 2015–2030. As shown, the total cost savings over the 16-year period of analysis would range

from \$195 million in 2023 U.S. dollars, using a three percent discount rate, and \$119 million in 2023 U.S. dollars using a seven percent discount rate. Expected total annualized cost savings from this

proposed rule would be \$15.5 million using a three percent discount rate and \$12.6 million using a seven percent discount rate.

Table 36. Total Monetized Present Value and Annualized Net Cost Savings of Vessel EEM 2015-2030 (2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Present Value Net Cost Savings	\$17,242,512	\$9,271,369
Annualized Net Cost Savings	\$1,372,691	\$981,445

Table 36 shows the discounted total quantified net cost savings from this proposed rule. As shown, the total net cost savings over the 16-year period of analysis compared to the baseline would be \$17.2 million in 2023 U.S. dollars, using a three percent discount rate and \$9.3 million in 2023 U.S. dollars using a seven percent discount rate. Expected total annualized net cost

savings from this proposed rule would range between \$1.4 million using a three percent discount rate and \$0.98 million using a seven percent discount rate. Accounting statements 1 and 2 show the expected costs, cost savings and benefits from this proposed rule for the regulatory period and the program as a whole, respectively. Though CBP presents the costs of the program as a

whole, including both the pilot period and the regulatory period, the costs of the pilot period are sunk for the purposes of decision-making. Therefore, CBP considered the net effects for the regulatory period when deciding whether to proceed with this rule.

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Accounting Statement 1: Regulatory Period (Fiscal Years 2026-2030) (discounted 2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Costs		
Annualized monetized costs	\$50,544,061	\$50,504,839
Annualized quantified, but non-monetized costs	None	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.
	Securing a Bond required to participate.	Securing a Bond required to participate.
	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
Cost Savings		
Annualized monetized cost savings	\$57,015,259	\$56,932,072
Annualized quantified, but non-monetized cost savings	None	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.	Reduce paper, printing and storage costs related to paper forms.
Benefits		
Annualized monetized benefits	None	None
Annualized quantified, but non-monetized benefits	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)
Qualitative (non-quantified) benefits	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.
	Gained efficiencies for trade by switching from paper to electronic data transmission.	Gained efficiencies for trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.	Improved communication among Federal Agencies with export jurisdiction.
Net Cost Savings	\$6,471,198	\$6,427,233

Accounting Statement 2: Vessel EEM Program (Fiscal Years 2015-2030)
(discounted 2023 U.S. dollars)

	3% Discount Rate	7% Discount Rate
Costs		
Annualized monetized costs	\$13,690,847	\$10,804,868
Annualized quantified, but non-monetized costs	None	None
Qualitative (non-quantified) costs	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.	If additional cargo examinations occur estimated cost to CBP would be around \$101.44 per additional exam.
	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.	Vessel carriers and voluntary participants may have to adjust business practices when moving from a paper to electronic process.
	Securing a Bond required to participate.	Securing a Bond required to participate.
	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.	Vessel carriers and voluntary participants must have someone available to respond to CBP questions about data transmitted.
	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.	Liquidated damages, \$5,000 for each violation up to max of \$100,000 per departure.
Cost Savings		
Annualized monetized cost savings	\$15,515,444	\$12,611,355
Annualized quantified, but non-monetized cost savings	None	None
Qualitative (non-quantified) cost savings	Reduce paper, printing and storage costs related to paper forms.	Reduce paper, printing and storage costs related to paper forms.
Benefits		
Annualized monetized benefits	None	None
Annualized quantified, but non-monetized benefits	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)	Prevent at least 25,795 high-risk cargo shipments from being loaded onto vessels. (Estimated number of requests for return and discharges eliminated by this proposed rule)
Qualitative (non-quantified) benefits	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.	Improve CBP's security efforts on sea exports; electronic data transmissions will allow CBP to use its ATS system to conduct risk assessment on all exports in the sea environment.
	Gained efficiencies for trade by switching from paper to electronic data transmission.	Gained efficiencies for trade by switching from paper to electronic data transmission.
	Improved communication among Federal Agencies with export jurisdiction.	Improved communication among Federal Agencies with export jurisdiction.
Net Cost Savings	\$1,372,691	\$981,445

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B. Regulatory Flexibility Act

This section examines the impact on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may

be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This proposed rule which requires electronic transmission of export manifest data for all cargo prior to departure for vessels departing the United States, could potentially impact a substantial number of small U.S. entities. CBP expects that all outbound vessel carrier companies that engage in exporting goods from the United States

in the sea environment and an unknown number of other trade members (such as USPPIs, FPPIs, customs brokers, ABI filer, NVOCCs, freight forwarders or any other party with direct knowledge of the export data element) would be affected by this proposed rule. The scope of impact on small U.S. entities depends largely on how many other trade members elect to provide electronic data directly to CBP as a result of this proposed rule but CBP expects that a significant number of small U.S. entities would be impacted from this proposed rule. CBP expects that approximately 45 outbound vessel carriers and around costs to outbound vessel carriers and other trade members from this proposed rule would be an average of \$99,148 each year, meanwhile the cost savings to the average trade member would be around \$114,160 annually. CBP expects that the net cost savings would be \$15,012 annually to the average trade member.¹⁰⁴

To determine how many outbound vessel carriers are small U.S. businesses, CBP used the Small Business Administration (SBA) size standards for Deep Sea Freight Transportation Industry (NAICS 483111) which defines

a small business as one with 1,050 employees or fewer regardless of revenue.¹⁰⁵ CBP obtained business level data on these 45 companies and compared the 45 anticipated outbound vessel carrier companies' employment numbers against the size standards to determine if each one is a small business.¹⁰⁶ CBP identified that 20 of these outbound vessel carrier companies qualify as small U.S. entities. Additionally, from the business level data obtained CBP estimates that the average annual revenue of these small U.S. entities was approximately \$271 million. CBP expects that at least 20 small U.S. outbound vessel carrier companies would be affected by this rule and incur annual costs around \$99,148 which on average represent just 0.04% of the annual revenue of these small U.S. outbound vessel carriers. CBP does not consider annual costs of less than one percent of annual revenue to be a significant economic impact to the average small U.S. vessel carrier company. Additionally, CBP anticipates that vessel EEM participants would experience time savings as a result of this proposed rule which is not reflected in the annual costs.

CBP expects that other trade members are categorized within the Freight Transportation Arrangement Industry (NAICS 488510). CBP used the SBA size standards to determine the percent of small entities within this industry.¹⁰⁷ SBA defines a small business in this industry as businesses with annual revenue less than \$34 million regardless of the number of employees.¹⁰⁸ CBP used data from the U.S. Census Bureau on industry level revenue and which shows that approximately 98% of businesses in the Freight Transportation Arrangement Industry (NAICS 488510) likely have annual revenue less than \$34 million and therefore CBP assumes that around 98% of businesses within this industry are small entities.¹⁰⁹ According to CBP's estimate that 455 other trade members would participate in providing vessel EEM data directly to CBP, approximately 448 of those CBP anticipates are small businesses. Table 37 displays U.S. Census Bureau industry level data on the Freight Transportation Arrangement Industry and CBP's process for determining the percentage of small businesses.

Table 37. Small Business in the Freight Transportation Arrangement Industry (NAICS 488510) (receipts in thousands of U.S. dollars)

Employment Size	Number of Firms	Total Receipts	Average Receipts Per Firm	SBA Size Standard	Small Business?
01: Total	15,104	\$64,643,370	\$4,280	\$34,000	-
02: < 5	8,912	\$6,244,628	\$701	\$34,000	YES
03: 5-9	2,731	\$5,256,561	\$1,925	\$34,000	YES
04: 10-19	1,524	\$5,808,892	\$3,812	\$34,000	YES
05: < 20	13,167	\$17,310,081	\$1,315	\$34,000	YES
06: 20-99	1,344	\$13,563,505	\$10,092	\$34,000	YES
07: 100-499	357	\$10,783,623	\$30,206	\$34,000	YES
08: < 500	14,868	\$41,657,209	\$2,802	\$34,000	YES
09: 500+	236	\$22,986,161	\$97,399	\$34,000	NO

Note: CBP acknowledges that it is possible for any firm in each category to be a small or large firm according to the SBA size standards, however since CBP does not have that level of detail available CBP assumes that all firms in a category are represented by the average receipts per firm.

¹⁰⁴ To calculate the expected net cost savings to the average outbound vessel carrier CBP used the average total estimated net costs to trade during the regulatory period divided by the estimated number of trade members participating in vessel EEM (500).

¹⁰⁵ U.S. Small Business Administration, "2023 Table of Size Standards," March 17, 2023, accessed July 2023. This is the most recent updated size standards provided by the U.S. Small Business Administration as of July 2024.

¹⁰⁶ CBP used Dun & Bradstreet Hoovers business database to obtain business level data on the 45

outbound vessel carrier companies identified by CBP to be affected by this proposed rule. CBP then compared the number of employees for each company by the SBA size standards to determine if that company is a small entity. CBP also used the physical address for each company to determine if the location is in a foreign or domestic location. Sampling was conducted in 2023.

¹⁰⁷ U.S. Small Business Administration, "2023 Table of Size Standards," March 17, 2023. This is the most recent updated size standards provided by the U.S. Small Business Administration as of July 2024.

¹⁰⁸ For NAICS 488510, CBP used the SBA size standard for Non-Vessel Owning Common Carriers and Household Goods Forwarders (Exception) (NAICS 488510) of \$34 million annual revenue instead of the Freight Transportation Arrangement (NAICS 488510) size standards of \$20 million of annual revenue.

¹⁰⁹ United States Census Bureau, "2017 County Business Patterns and 2017 Economic Census," Released March 6, 2020, <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>. Accessed July 28, 2023.

CBP expects that the average annual revenue for other trade members that are small businesses is approximately \$2.8 million (see Table 33). CBP expects approximately 448 of these trade members would incur on average costs of \$99,148 annually as a result of this proposed rule. CBP estimates that the average annual costs to other trade members would represent about 3.5% of the average annual revenue for small entities. CBP considers costs of more than one percent of revenue to be a significant economic impact. These costs do not take into account any potential cost savings experienced by other trade members that are small businesses as a result of this proposed rule. CBP notes that these trade members are not required to participate directly in providing vessel EEM data to CBP and CBP assumes they would only participate directly if they determine their benefits exceed their costs.

The Regulatory Flexibility Act generally requires agencies to prepare a regulatory flexibility analysis for proposed rules, unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. According to CBP's estimates on the impacts of this proposed rule, CBP could not conclude that the costs to a substantial number of small entities from this proposed rule would be sufficiently small to justify "certification." Accordingly, the proposed rule is subject to the regulatory analysis of 5 U.S.C. 603 and 604 and CBP has conducted the following Initial Regulatory Flexibility Analysis. CBP requests comments on this determination.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

CBP is proposing to amend regulations as part of its ongoing efforts to transition away from paper forms and to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415). The Trade Act directs CBP to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments (sea, air, rail, and truck). CBP believes this proposed rule provides the best option to transition to electronic environments and implement the Trade Act authority in a way that also improves CBP's enforcement efforts on cargo security and smuggling prevention.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

This proposed rule is authorized under the Trade Act. This proposed rule would require trade members to provide export manifest data to CBP electronically for all exports in the sea environment prior to departure. Obtaining export manifest data electronically for exports in the sea environment prior to departure would allow CBP to use the Automated Targeting System (ATS) to conduct risk assessment and to identify high-risk shipments before they depart the United States. Additionally, transitioning to obtaining export manifest data through an electronic system allows CBP to implement the Trade Act (for exports in the sea environment) and improve CBP's cargo security efforts and smuggling prevention efforts.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

This proposed rule would affect all outbound vessel carriers that engage in exporting cargo out of the United States. CBP identified 45 outbound vessel carrier companies that engage in exporting goods out of the United States, of which 39 (20 domestic entities, 19 foreign entities) were determined to be small entities. All of these small entities would be affected by this proposed rule.

Additionally, CBP anticipates that a substantial number of other trade members (including USPPs, FPPs, customs brokers, ABI filer, NVOCCs, and freight forwarders) would be affected by this proposed rule, specifically for those other trade members who elect to participate in providing vessel EEM data directly to CBP. CBP anticipates that 455 other trade members would elect to directly participate in providing vessel EEM data to CBP. Approximately 448 of those other trade members are expected to be small entities.¹¹⁰

¹¹⁰ According to CBP estimates, see Table 33, approximately 98% of entities in the Freight Transportation Arrangement Industry (NAICS 488510) are small entities. CBP multiplied the percentage of small entities in the industry (98%) by the expected number of direct vessel EEM participants in the industry (455) to estimate the number of small entities that would elect to directly participate in vessel EEM (.98 × 455 = 448).

4. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This proposed rule would propose changes to reporting and recordkeeping and compliance for outbound vessel carriers and other trade members that elect to provide electronic export manifest data directly to CBP. Outbound vessel carriers would no longer be required to complete and submit CBP Form 1302A 'Cargo Declaration Outward with Commercial Forms' in lieu of providing export manifest electronically to CBP as part of the vessel EEM. Reporting and recordkeeping would transition away from paper forms and would all be conducted in an electronic environment as vessel EEM participants would develop their own IT system to submit data directly to CBP via ACE. All outbound vessel carriers and other trade members electing to participate directly in vessel EEM would be required to submit export manifest data elements under new deadlines prior to departure. This proposed rule provides CBP with authority to impose penalties and/or claims for liquidated damages on parties that do not provide the mandatory EEM data in the manner and in the time frame required. CBP expects that this proposed rule would affect a substantial number of small entities including companies categorized as outbound vessel carriers, USPPs, FPPs, customs brokers, ABI filer, NVOCCs, and freight forwarders. Because this proposed rule largely moves from a paper submission to an electronic submission and because many entities are already submitting data electronically for imports into the United States, CBP anticipates that any small entity affected by this proposed rule would already possess the professional skills necessary for the preparation of the proposed reporting of electronic export manifest data as would be required for vessel EEM.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

This proposed rule would require export manifest data for all exports in the sea environment to be provided to CBP electronically through CBP's ACE as per 19 CFR 4.61, 4.63, 4.75, and 4.76. CBP would transition away from the paper process to only accepting the electronic versions of the CBP Form

1302A 'Cargo Declaration Outward with Commercial Forms. This rule does not duplicate, overlap, or conflict with any existing Federal rules.

6. A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

Alternative 1 (chosen alternative): Allows CBP to require trade to provide export manifest data electronically to CBP prior to departure for all exports in the sea environment. According to Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 1415), CBP is authorized to establish regulations that provide for the mandatory electronic transmission of data by way of a CBP-approved electronic data interchange before cargo arrives or departs the United States in all environments. The requirement to submit manifest data electronically in such a way is important to help facilitate a more efficient trade process. Submitting electronic export manifest data prior to departure also increases CBP's ability to conduct proper risk assessment and identify high-risk cargo to ensure cargo security and to prevent smuggling before vessels depart.

Alternative 2: No regulatory action. Alternative 2 would mean that the status quo would continue, and trade members would provide export manifest data to CBP for many exports in the sea environment post departure and on paper CBP Form 1302As. This alternative would avoid all the costs and benefits under the rule. Alternative 2 would eliminate average annual total costs of approximately \$50.1 million and would eliminate all cost savings associated with this proposed rule, which CBP expects would be on average \$57.1 million annually.^{111 112} Alternative 2 would also not generate any benefits to CBP from improved cargo security efforts on exports in the sea environment. Under this alternative CBP would not implement the Trade Act authority with respect to these

exports and would not be able to conduct proper risk assessment on exports in the sea environment because export manifest data is provided post departure.

Alternative 3: Exempt small entities from the effects of the proposed rule.

Exempting small entities from this proposed rule would result in only a few large entities being affected. According to CBP's estimates of the number of outbound vessel carrier companies and other trade members that are not small businesses, under this alternative there would be a total of six outbound vessel carrier companies and approximately seven other trade members effected by this proposed rule. The costs of this proposed rule would be significantly lower under alternative 3 when compared to the proposed rule. Using the average annual costs of \$99,148 per business, if only 13 companies participate in vessel EEM, then the average annual total costs to trade members would decrease from \$49.6 million to around \$1.3 million. However, the average annual total cost savings from this rule to trade members would also decrease significantly. CBP expects that alternative 3 would generate annual cost savings of around \$114,160 per participating business, totaling approximately \$1.5 million each year.¹¹³ Compared to alternative 1, alternative 3 would result in a decline in average annual total cost savings of around \$55.6 million (\$57.0 million – \$1.5 million). Although alternative 3 would avoid costs to small entities, CBP would not implement the Trade Act authority on all exports in the sea environment. Additionally, CBP would not be provided export manifest data for all exports prior to departure in the sea environment, preventing CBP from being able to conduct proper risk assessment to ensure cargo security and to prevent smuggling.

CBP has chosen to implement Alternative 1. CBP believes this is the best alternative to implement the Trade Act for all exports in the sea environment and to enhance CBP's efforts to ensure cargo security while also preventing smuggling for sea exports. Additionally, transitioning to electronic submission of data allows for

a more efficient process for all parties involved and providing export manifest data prior to departure would prevent high-risk shipments from departing the United States in the sea environment.

C. Paperwork Reduction Act

An agency may not conduct, or sponsor and an individual is not required to respond to a collection of information unless it displays a valid OMB control number. The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1651–0001.

CBP anticipates that this proposed rule would result in a reduction in time burden to respondents when providing vessel EEM data directly to CBP. This proposed rule establishes new requirements for trade members to provide electronic export manifest data for vessels departing the United States to CBP prior to a vessel departing from a U.S. port of export. CBP notes that prior to this proposed rule trade members were already providing vessel export manifest data to CBP through the paper Export Cargo Declaration CBP Form 1302A. This proposed rule would now require trade members to provide vessel EEM prior to departure and would eliminate the paper CBP Form 1302A, removing time burdens associated with CBP Form 1302A from collection 1651–0001. Comments on the information collection may address one or more of the following four points:

(1) Is the collection of information necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Are there ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Are there 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 (e.g., permitting electronic submission of responses).

Under this proposed rule, collection 1651–0001 would be revised to reflect the changed burden hours from eliminating the CBP Form 1302A and introducing a new time burden to trade

¹¹¹ This would include all expected costs to CBP and trade members as a result of this proposed rule including, CBP's systems maintenance and operating costs, costs to CBP to review and address generated holds on vessel EEM data, all expected costs to trade members to upgrade IT systems and provide vessel EEM data and respond to holds.

¹¹² Cost savings eliminated in alternative 2 include all cost savings to trade members from transitioning to a pre-departure electronic data submission process and this alternative would not decrease any requests for cargo returns or discharges or induce the time savings from submitting electronic data compared to paper submission.

¹¹³ CBP calculated the average annual cost savings per entity of around \$114,160 by dividing average total annual estimated cost savings during the regulatory period by the anticipated number of entities affected. CBP estimates in the regulatory impact analysis for this proposed rule that the average total annual cost savings to trade members would be around \$57.1 million. CBP assumes the cost savings would be equally distributed across all participating entities and therefore divided \$57.1 million by 500 entities resulting in average annual cost savings to each entity of around \$114,160.

members for providing vessel EEM data to CBP prior to departure of the vessel from a U.S. port of export. The new information collection requirements from this proposed rule would result in the following change in the estimated time burdens to the public for the information collection number 1651–0001:

Time Savings From Eliminating the Export Cargo Declaration (CBP Form 1302A)

Estimated number of respondents annually: 45.

Average responses per respondent: 231,585.

Total responses: 10,421,341.

Estimated time savings per respondent: 11,579 hours.

Total time savings: 521,067 hours.

Time Burden From Requiring Vessel EEM

Estimated number of respondents annually: 500.

Average responses per respondent: 23,343.

Total responses: 11,671,431.

Estimated time savings per response: 661 hours.

Total time burden: 330,691.

CBP expects that as a result of this proposed rule estimated time burden hours to the public related to this information collection would decrease by around 200,123 hours down from 11,653,193 to 11,453,070 burden hours. CBP estimates that the cost to the public from this information collection would now be \$826,568,048.

CBP also expects that this proposed rule would result in a decrease in the time burden and the annual cost to the Federal government for this information collection. This proposed rule would decrease time burdens to the Federal government by eliminating the paper CBP Form 1302A and because CBP's Automated Targeting System would automate the review process for vessel EEM data provided to CBP. CBP officers would experience a reduced time burden from reviewing an estimated 0.27 percent of all vessel EEM responses provided by the public. These revisions decreased the total number of responses reviewed by CBP for this information collection by 11,138,898 resulting in a reduced time burden of around 928,241 hours and cost reduction of around \$67,761,628 annually. The total estimated cost to the Federal government from this collection is now estimated to be \$1,708,392,011.

D. Privacy

CBP will ensure that all Privacy Act requirements and applicable DHS

privacy policies are adhered to as a result of this proposed regulation.¹¹⁴ CBP has issued a Privacy Impact Assessment (PIA) for the Automated Commercial Environment (ACE),¹¹⁵ which outlines how CBP ensures compliance with Privacy Act protections and DHS privacy policies, including DHS's Fair Information Practice Principles (FIPPs).

The FIPPs account for the nature and purpose of the information being collected in relation to DHS's mission to preserve, protect and secure the United States. The PIA addresses issues such as the security, integrity, and sharing of data, use limitation and transparency. The PIA is publicly available at: <http://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

The Privacy Act of 1974 requires that federal agencies issue a System of Record Notice (SORN) to provide the public notice regarding personally identifiable information (PII) collected in a system of records. SORNs explain how the information is used, retained, and may be accessed or corrected, and whether certain portions of the system are subject to Privacy Act exemptions for law enforcement, national security, or other reasons. CBP issued the DHS/CBP–001 Import Information Systems (IIS) System of Records and the DHS/CBP–020 Export Information System (EIS) System of Records, which provide coverage for the proposed regulation.¹¹⁶

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. See section 202(a) of the

¹¹⁴ See the DHS Privacy Policy web page, available at <https://www.dhs.gov/privacy-policy-guidance>.

¹¹⁵ See U.S. Department of Homeland Security, U.S. Customs and Border Protection, Privacy Impact Assessment for The Automated Commercial Environment, DHS/CBP/PIA–003 and all subsequent updates, available at <https://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

¹¹⁶ See DHS/CBP–001 Import Information System, 81 FR 48826 (July 26, 2016), available at <https://www.dhs.gov/system-records-notices-sorn>; and DHS/CBP–020 Export Information Systems (EIS), 80 FR 53181 (Jan. 2, 2015), available at <https://www.federalregister.gov/documents/2015/09/02/2015-21675/privacy-act-of-1974-department-of-homeland-security-us-customs-and-border-protection-dhscbp-020>.

UMRA (2 U.S.C. 1532(a)). This proposed rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Therefore, no actions were deemed necessary under the provisions of the UMRA.

VI. Signing Authority

The signing authority for these amendments falls under 19 CFR 0.2(a).

Accordingly, this document is signed by the Secretary of Homeland Security (or the Secretary's delegate).

List of Subjects

19 CFR Part 4

Exports, Freight, Harbors, Maritime carriers, Oil pollution, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 103

Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Law enforcement, Privacy, Reporting and recordkeeping requirements.

19 CFR Part 113

Common carriers, Exports, Freight, Laboratories, Reporting and recordkeeping requirements, Surety bonds.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, CBP proposes to amend parts 4, 103 and 113 of title 19 of the Code of Federal Regulations (19 CFR parts 4, 103 and 113) as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

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Section 4.61 also issued under 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55115–55117, 55119;

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Section 4.75 also issued under 46 U.S.C. 60105;

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Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

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Section 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 60308;

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Section 4.84 also issued under 46 U.S.C. 12118;

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

Section 4.86 also issued under 19 U.S.C. 1442;

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Section 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;

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Section 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

* * * * *

■ 2. Amend § 4.61 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b), add at end of the fourth sentence before the period “or its electronic equivalent”; and

■ c. Add paragraph (c)(25).

The revision and addition read as follows:

§ 4.61 Requirements for clearance.

(a) *Application for Clearance.* A clearance application for a vessel intending to depart for a foreign port must be made by filing Vessel Entrance or Clearance Statement, CBP Form 1300 (Vessel Entrance or Clearance Statement), executed by the vessel master or other proper officer with CBP, or by transmitting a certified electronic equivalent via an approved electronic system. Clearance will be granted by CBP either on the Vessel Entrance or Clearance Statement, CBP Form 1300, or by approved electronic means. Clearance may be permitted at times and at locations as the port director may designate. For clearance by non-electronic means, the port director may require advance notice of vessel departure be given prior to granting requests for optional clearance locations. Expenses incurred by CBP for clearance at such locations will be reimbursed as authorized.

* * * * *

(c) * * *

(25) Electronic receipt of required electronic export manifest information (see).

* * * * *

■ 3. Revise § 4.62 to read as follows:

§ 4.62 Accounting for inward cargo.

Inward cargo discrepancies shall be accounted for and adjusted through the electronic manifest correction process (see § 4.12).

■ 4. Revise § 4.63 to read as follows:

§ 4.63 Advance vessel and cargo departure information: Outward Cargo Declaration; Electronic Export Manifest (EEM); Electronic Export Information

(a) *General requirement.* No vessel will be cleared directly for a foreign port, or for a foreign port by way of another domestic port (see § 4.87(b)),

unless CBP receives certain advance vessel and cargo departure information. CBP must receive this information no later than the time frames prescribed in paragraph (b) of this section. CBP must receive from the outbound vessel carrier a Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent. CBP must also receive from the outbound vessel carrier, or other eligible filer as specified in paragraph (c) of this section, electronic information concerning the vessel and its cargo, known as Electronic Export Manifest (EEM) data and enumerated in paragraphs (d), (e), and (f) of this section. Any EEM holds must be resolved in accordance with the provisions and time frames prescribed in paragraph (g) of this section. Any Do-Not-Load (DNL) instructions must be addressed in accordance with the provisions prescribed in paragraph (h) of this section. Additionally, CBP must receive certain Electronic Export Information (EEI) pursuant to § 192.14 of this chapter and the Census Bureau's Foreign Trade Regulations (FTR) (15 CFR part 30). The transmission of the required EEM and EEI data must occur through CBP-approved electronic interchange systems. Completion of the EEM data requirements of this section serves as a complete manifest for purposes of this chapter.

(b) *Time frame for transmitting advance vessel and cargo departure information—*

(1) *Vessel Clearance Statement.*

Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent must be presented to CBP by the outbound vessel carrier no later than 2 hours prior to departure of the vessel from the United States either directly or via another domestic port or ports (see § 4.61(a)).

(2) *EEM data—*

(i) *Initial filing.* The initial filing of EEM data required by paragraph (d) of this section must be transmitted as early as practicable, but no later than 24 hours prior to loading of cargo on the vessel departing from the United States.

(ii) *Other EEM data.* The EEM data other than the initial filing data described in paragraph (d) of this section must be transmitted according to the two-hour time frame prior to loading the cargo on the vessel in anticipation of departure as identified below:

(A) *Export manifest transportation data.* The export manifest transportation data described in paragraph (e) of this section must be transmitted no later than 2 hours prior to loading of the cargo on the vessel in anticipation of departure of the vessel from the United

States either directly or via another domestic port or ports.

(B) *Export manifest cargo data.* The export manifest cargo data described in paragraph (f) of this section must be transmitted no later than 2 hours prior to loading of the cargo on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports.

(C) *Empty container data.* Data related to empty containers as described in paragraph (f) of this section must be transmitted no later than 2 hours prior to loading of the container on the vessel in anticipation of departure of the vessel from the United States either directly or via another domestic port or ports.

(3) *Electronic Export Information (EEI).* Electronic Export Information (EEI) must be filed in the manner and in the time frames established by § 192.14 of this chapter and the Census Bureau's Foreign Trade Regulations (FTR) (15 CFR part 30).

(4) *Updates.* The party described in paragraph (c) of this section who transmits data required by this section must update the data if, after the filing is transmitted, any of the transmitted data changes or more accurate data becomes available. Updates are required upon discovery of data changes or availability. The outbound vessel carrier shall notify the U.S. Principal Party in Interest (USPPI) or the authorized agent of changes to the transportation data. The corrections, cancellations, or amendments to transportation data shall be electronically transmitted by the USPPI or the authorized agent in accordance with the FTR (15 CFR part 30).

(5) *Post-departure EEM and/or EEI.* Consistent with the provisions of § 4.75, only certain EEM or EEI may be filed post-departure.

(c) *Parties filing advance vessel and cargo departure information—*

(1) *Outbound vessel carrier.* The outbound vessel carrier must submit Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent. The outbound vessel carrier also must transmit the export manifest transportation data described in paragraph (e) of this section and data for any empty container as described in paragraph (f) of this section. If no other eligible party elects to transmit the initial filing required by paragraph (d) of this section and/or the export manifest cargo data described in paragraph (f) of this section, the outbound vessel carrier must transmit the applicable EEM data. If another eligible party elects to transmit the initial filing data and/or export manifest cargo data, the

outbound vessel carrier may also choose to do so.

(2) *U.S. Principal Party in Interest (USPPI) or Filing Agent for Foreign Principal Party in Interest (FPPI).* The U.S. Principal Party in Interest (USPPI), as defined by § 30.2 of the FTR (15 CFR 30.2) or its authorized filing agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) as defined by § 30.2 of the FTR (15 CFR 30.2) is responsible for the electronic transmission of EEL.

(3) *Other filers.* In addition to the outbound vessel carrier and the USPPI or its authorized agent, or the authorized agent of the FPPI, for whom certain transmissions are mandatory, any other party with direct knowledge of the EEM data, which may include a customs broker, Automated Broker Interface (ABI) filer, non-vessel operating common carrier (NVOCC) as defined by § 4.7(b)(3)(ii), or a freight forwarder as defined by part 112 of this chapter, meeting the qualifications of paragraph (a) of this section that require transmission of information through a CBP-approved electronic system, may elect to transmit to CBP the initial filing data required by paragraph (d) of this section and/or the export manifest cargo for outgoing cargo listed in paragraph (f) of this section.

(4) *Non-participation by other party.* If another party specified in paragraph (c)(3) of this section does not transmit EEM data, the party that arranges for and/or delivers the cargo to the outbound vessel carrier must fully disclose and present to the outbound vessel carrier the cargo information listed in paragraphs (d) and (f) of this section. The outbound vessel carrier must transmit this information to CBP in accordance with this section.

(5) *Bond required.* Any party described in paragraph (c) of this section transmitting any of the data described in this section other than the USPPI or its authorized agent or the authorized agent of the FPPI, must transmit to CBP pursuant to part 113 of this chapter the appropriate bond containing all the necessary conditions of § 113.62, § 113.63, or § 113.64 of this chapter.

(6) *Required information in possession of third party.* Any entity in possession of required data that is other than the outbound vessel carrier, USPPI or its authorized agent, the authorized agent of the FPPI, or a party described in paragraph (c)(3) of this section must fully disclose and present the required data to either the outbound vessel carrier or other eligible electronic filer, as applicable, which must transmit such data to CBP.

(7) *Party receiving information believed to be accurate.* Where the party electronically transmitting the data required in paragraphs (d), (e), and (f) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the transmitting party acquired such information, and whether and how the transmitting party is able to verify this information. Where the transmitting party is not reasonably able to verify such information, CBP will permit the party to electronically transmit the information based on what that party reasonably believes to be true.

(d) *Initial filing.* The following EEM data comprises the initial filing which is mandatory and may be made by any eligible party identified in paragraph (c) of this section.

(1) Bill of Lading number;

(2) The numbers and quantities of the cargo laden aboard the vessel as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(3) Total Weight of cargo expressed in pounds or kilograms;

(4) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper); or, for a sealed container, the shipper's declared description (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," "bulk cargo" and "STC" ("said to contain") are not acceptable);

(5) The shipper's complete name and address, or identification number, from the Bill(s) of Lading (for each house bill in a consolidated shipment);

(6) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered to in the foreign country. However, in the case of cargo shipped "to order of [a named party]," the "to order" party must be named as the consignee; and if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information including address in the "Notify Party" field.);

(7) The estimated scheduled departure date and departure port; and

(8) Automated Export System (AES) Internal Transaction Number (ITN) or

AES Exemption Statement (per shipment).

(e) *Export manifest transportation data—*

(1) *Mandatory data.* The following transportation data is mandatory and must be transmitted by the outbound vessel carrier:

(i) Mode of transportation data (containerized vessel cargo or non-containerized vessel cargo);

(ii) Vessel Country Code (International Organization for Standardization (ISO) country code);

(iii) Vessel Name;

(iv) Voyage Number;

(v) Port of Departure;

(vi) Port of Unloading;

(vii) Date of Departure;

(viii) Bill of Lading type (Master, House or Simple);

(ix) Vessel Code (International Maritime Organization (IMO) code);

(x) The outbound vessel carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes; see § 4.7a(c)(2)(iii));

(xi) Container information;

(xii) Load Status (Empty or Loaded); and

(xiii) Place outbound vessel carrier took possession of cargo or empty container.

(2) *Conditional data: seal number(s).* Seal number(s) constitutes conditional transportation data and must be transmitted by the outbound vessel carrier when applicable. The seal numbers must be provided for all seals affixed to containers to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(3) *Optional data—*

(i) Marks and Numbers;

(ii) Number of house Bills of Lading; and

(iii) Country of Ultimate Destination.

(f) *Export manifest cargo data—*

(1) *Mandatory data.* The following export manifest cargo data is mandatory and may be transmitted by any eligible party described in paragraph (c) of this section. If the information has been provided in the initial filing described in paragraph (d) of this section, it need not be transmitted again unless there are updates or changes.

(i) Shipper name and address (for empty containers, the shipper may be

the carrier from whom the outbound vessel carrier received the empty container to transport);

(ii) Consignee name and address (for empty containers, the consignee may be the carrier to whom the outbound vessel carrier is transporting the empty container);

(iii) Port of Lading;

(iv) Bill of Lading numbers;

(v) Bill of Lading type (Master, House, or Simple); and

(vi) Cargo description.

(2) *Conditional data.* The following export manifest cargo data is conditional and may be transmitted by any eligible party eligible described in paragraph (c) of this section:

(i) In-bond number and type or in-bond house bill number;

(ii) Mexican Pedimento (for cargo exported to Mexico);

(iii) Notify Party name and address;

(iv) Chemical Abstract Service (CAS) Registry Number;

(v) Additional Party Details; and

(vi) 6-character Hazmat Code (UN (for United Nations Number) or NA (North American Number) and the corresponding 4-digit identification number assigned to the hazardous material must be provided).

(3) *Optional data.* The following export manifest cargo data is optional and may be transmitted by any eligible party described in paragraph (c) of this section:

(i) Secondary Notify Party SCAC; and

(ii) Vehicle Identification Number (VIN).

(g) *EEM holds—*

(1) *Potential holds.* There are two types of holds that may be issued by CBP after a risk assessment of an EEM data transmission:

(i) *2H Documentation hold.* A 2H documentation hold will be issued if a risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable information; and

(ii) *1H Enforcement hold.* A 1H enforcement hold will be issued if a potential high-risk cargo or container is identified and warrants further examination. Enforcement holds may be issued even if the cargo or container has already been loaded onto the vessel.

(2) *Hold resolution.* All parties transmitting EEM data and/or the outbound vessel carrier, as applicable, must respond to and take the necessary action to address all holds as provided in paragraphs (g)(2)(i)–(ii) of this section. The appropriate protocols and time frame for taking the necessary action to address these holds must be

followed as directed. The parties responsible for taking the necessary actions to address EEM holds are as follows:

(i) *2H Documentation hold.* The party who transmitted the EEM data is responsible for taking the necessary action to address a documentation hold issued upon CBP review of that data. The responsible party must update the missing or invalid EEM data to release the hold on the cargo or container. Until CBP releases the hold, the cargo or container should not be loaded onto the vessel.

(ii) *1H Enforcement holds—(A) Generally.* An enforcement hold requires a CBP officer to conduct a manual review of the EEM data transmitted. The party that transmitted the EEM data to CBP will be notified of the hold and if CBP needs to conduct further examination of the data transmission or if a mandatory inspection of the cargo or container is necessary. If the party who transmitted the EEM data is the outbound vessel carrier, it may address an enforcement hold directly. If the party who transmitted the EEM data is a party other than the outbound vessel carrier, the party who transmitted the EEM data may choose to address the enforcement hold directly while informing the outbound vessel carrier of the hold. If the party who transmitted the EEM data chooses not to address the enforcement hold, it must notify the outbound vessel carrier of the enforcement hold. Upon such notification, the outbound vessel carrier is responsible for taking the necessary action to address the enforcement hold.

(B) *Issued after loading.* If an enforcement hold is issued after loading the cargo or container onto the vessel and CBP requests to manually examine the cargo or container, the outbound vessel carrier must coordinate with the appropriate parties to remove the cargo or container before departure so CBP officers can manually examine the cargo or container. If the vessel has already departed the U.S. port of export the outbound vessel carrier must return the cargo or container from foreign for CBP to examine or discharge the cargo or container if the vessel is stopping at a second U.S. port.

(3) *Prohibition on transporting cargo or containers with unresolved holds.* The outbound vessel carrier may not transport cargo or containers on a vessel destined for departure from the United States until all holds issued pursuant to paragraph (g)(1) of this section with respect to such cargo or containers, other than enforcement holds issued as

described in paragraph (g)(2)(ii)(B) of this section, have been resolved.

(h) *Do-Not-Load (DNL) instructions—*

(1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo or container may contain a potential immediate lethal threat to the vessel and its vicinity.

(2) All outbound vessel carriers and any other transmitter must respond fully and cooperate when a Do-Not-Load (DNL) instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) protocols and the directions provided by law enforcement authorities. All outbound vessel carriers and transmitters who receive a DNL instruction must contact CBP at the port of export.

(3) The outbound vessel carrier may not transport cargo with a Do-Not-Load (DNL).

■ 5. Amend § 4.72 by revising the last sentence of paragraph (a) to read as follows:

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) * * * If such statement has been used as the basis for obtaining vessel clearance, failure to submit a copy of the certificate to CBP within 4 days of departure may result in issuance by CBP of a request for redelivery of the shipment and/or in the assessment of penalties or liquidated damages as prescribed by law.

* * * * *

■ 6. Amend § 4.75 by revising paragraphs (a) and (b) to read as follows:

§ 4.75 Complete Electronic Export Manifest (EEM) and Electronic Export Information (EEI) requirements and exceptions.

(a) The Electronic Export Manifest (EEM) data required by § 4.63 is a complete manifest. Post-departure filing of EEM data is not permitted except as provided in paragraph (b) of this section. Post-departure filing of Electronic Export Information (EEI) is not permitted except as provided for eligible parties by the provisions of the Census Bureau's Foreign Trade Regulations (15 CFR part 30).

(b) For shipments from a State or the District of Columbia to Puerto Rico or from Puerto Rico to a State or the District of Columbia, the EEM data required by § 4.63 may be filed within one business day after arrival in Puerto Rico or a State or the District of Columbia. For a party to avail itself of this allowance, a bond must be transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64.

Liquidated damages will apply for the failure to transmit the EEM in a timely manner.

* * * * *

§ 4.76 [Removed]

■ 7. Remove § 4.76.

§ 4.81 [Amended]

■ 8. Amend § 4.81 as follows:

■ a. In paragraph (e):

■ i. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

■ ii. At the end of the first sentence, before the text “in duplicate” add the text “or its electronic equivalent; if a paper form is filed, it must be filed”;

■ iii. In the second sentence, add the text “, or its electronic equivalent” after the text “Vessel Entrance or Clearance Statement”;

■ iv. In the third sentence, add the text “, or its electronic equivalent” after the text “Cargo Declaration”;

■ v. In the fourth sentence, remove the text “Three” and add, in its place, the text “If the Cargo Declaration is filed in paper form, three”;

■ vi. At the end of the fifth sentence before the period, add the text “; the port director may also grant the permit through an electronic system approved by CBP on the electronic equivalent of Vessel Entrance or Clearance Statement, CBP Form 1300”;

■ vii. In the eighth sentence, add the text “, or updated electronic equivalent,” after the first appearance of the text “Vessel Entrance or Clearance Statement”, and add the text “or its electronic equivalent,” after the second appearance of “Vessel Entrance or Clearance Statement”;

■ b. In paragraph (g)(1):

■ i. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

■ ii. Add the text “, or its electronic equivalent” after the text “Form 1300”, wherever it appears; and

■ c. In paragraph (g)(2), add the text “, or its electronic equivalent” after the text “Form 1300”, wherever it appears.

■ 9. Amend § 4.82 as follows:

■ a. In paragraph (a), remove the last sentence, and add, in its place, the sentence “The Electronic Export Manifest (EEM) data (see § 4.63) need only be transmitted pertaining to the cargo for foreign destination. (See §§ 4.61 and 4.87.)”;

■ b. Revise paragraph (b);

■ c. In paragraph (c), in the last sentence, remove the phrase “and the certified copies of the coastwise Cargo Declaration, Customs Form 1302”; and

■ d. In paragraph (d), in the last sentence, remove the phrase “by the

coastwise Cargo Declaration, Customs Form 1302, or otherwise, as part of the coastwise cargo.”.

The revision reads as follows:

§ 4.82 Touching at foreign port while in coastwise trade

* * * * *

(b) The carrier must also transmit electronically to CBP cargo information for merchandise to be transported via the foreign port or ports to the subsequent ports in the United States to include information consistent with an initial filing of EEM data as described in § 4.63(d). Merchandise to be carried by the vessel under a transportation entry pursuant to part 18 of this chapter need not be included in this transmission.

* * * * *

■ 10. Revise and republish § 4.84(c) to read as follows:

§ 4.84 Trade with noncontiguous territory.

* * * * *

(c)

(1) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (excluding Puerto Rico), or from Puerto Rico to any State or the District of Columbia, or any other noncontiguous territory, will not be permitted to depart without filing a complete EEI filing, when required by the Census Bureau’s Foreign Trade Regulations (15 CFR part 30). Requests for permission to depart may be written, oral, or electronic, and permission to depart will be granted by the appropriate CBP officer. The Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent, required at the time of clearance is not required to transport merchandise to or from any State or the District of Columbia and any non-contiguous territory.

(2) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico must file a complete EEI filing, when required by the Census Bureau’s Foreign Trade Regulations (15 CFR part 30).

* * * * *

§ 4.85 [Amended]

■ 11. Amend § 4.85 as follows:

■ a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

■ b. Revise paragraph (a), to read as follows: “Any foreign vessel or documented vessel with a registry endorsement, arriving from a foreign port with cargo or passengers

manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond has been transmitted to CBP pursuant to part 113 of this chapter, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, in a suitable amount. No additional bond shall be required at subsequent ports of entry. Before the vessel departs from the port of first arrival, the master shall obtain from the port director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest). The certified copy shall have a legend similar to the following endorsed on the Vessel Entrance or Clearance Statement, Customs Form 1300:

Port

Date

Certified to be a true copy of the original inward foreign manifest.

Signature and title

The traveling manifest described in this paragraph (a) may also be obtained through an electronic system approved by CBP.”;

■ c. In paragraph (b)(1), add at the end of the paragraph the sentence “The application for and the granting of a permit to proceed to the next port described in this paragraph (b)(1) may also be transmitted through an electronic system approved by CBP on the electronic equivalent of Vessel Entrance or Clearance Statement, CBP Form 1300.”;

■ d. In paragraph (b)(2):

■ i. At the beginning of the first sentence, remove the word “The”, and add, in its place, the phrase “If the master presented a paper application pursuant to paragraph (b)(1) of this section, the”;

■ ii. In the second sentence, after the text “Form 1300”, add the text “, or electronic equivalent,” and after the word “proceed”, add the phrase “or by indicating electronically that only loading will occur”;

■ e. In paragraph (c)(1):

■ i. In the second sentence, add the text “, or its electronic equivalent” after the text “this section”; and

■ ii. In the third sentence, add the text “, or their updated electronic equivalents” after the text “Form 1302”.

§ 4.86 [Amended]

■ 12. Amend § 4.86 as follows:

■ a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;

■ b. In paragraph (a), add the text “, or its electronic equivalent” after the text “Form 1302”;

- c. In paragraph (b):
- i. In the first sentence, remove the text “in original only” and add, in its place, the text “, or its electronic equivalent,”; and
- ii. Add at the end of the last sentence the text “or its electronic equivalents”.

§ 4.87 [Amended]

- 13. Amend § 4.87 as follows:
 - a. Revise paragraph (b);
 - b. In paragraph (c), add the text “, or its electronic equivalent” after the text “Form 1300”;
 - c. In paragraph (d):
 - i. Add the text “, or its electronic equivalent” after the text “Form 1300”;
 - ii. Add the text “, or its electronic equivalent” after the text “Vessel Entry or Clearance Statement”; and
 - d. Remove paragraphs (f) and (g).
 The revision reads as follows:

§ 4.87 Vessels proceeding foreign via domestic ports.

* * * * *

(b) When applying for a clearance from the first and each succeeding port of lading, the master must present to the port director a Vessel Entrance or Clearance Statement, CBP Form 1300, or its electronic equivalent, and the Electronic Export Manifest (EEM) data in accordance with § 4.63 for all the cargo laden at that port. All previous ports of lading must be identified.

* * * * *

- 14. Revise § 4.88(c) to read as follows:

§ 4.88 Vessels with residue cargo for foreign ports.

* * * * *

(c) If the vessel clears directly foreign from the first port of arrival, cargo brought in from foreign ports and retained on board shall be declared in the Electronic Export Manifest (EEM) transmission (see § 4.63). If any cargo has been landed, the EEM data must describe each item of the cargo from a foreign port which has been retained on board.

* * * * *

§ 4.89 [Amended]

- 15. Amend § 4.89 as follows:
 - a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;
 - b. In paragraph (a), remove the last sentence, and add, in its place, the sentence “The Electronic Export Manifest (EEM) data (see § 4.63) must show the cargo destined for a foreign port or place in the manner provided for in § 4.88(c).”;
 - c. In paragraph (b):
 - i. Add the text “, or the electronic equivalent(s)” after the text “Declarations”;

- ii. Add the text “, or its electronic equivalent” after the text “Form 1300”
- d. In paragraph (c), add the text “, or its electronic equivalent” after the text “Form 1302”; and
- e. In paragraph (d), add the text “, or their electronic equivalents” after the text “Declaration”.

§ 4.90 [Amended]

- 16. In § 4.90(b), remove the text “Customs Form 1300”, and add, in its place, the text “CBP Form 1300, or its electronic equivalent”.

§ 4.91 [Amended]

- 17. Amend § 4.91 as follows:
 - a. Remove the text “Customs”, wherever it appears, and add, in its place, the text “CBP”;
 - b. In paragraph (a):
 - i. Add the text “, or its electronic equivalent” after the text “Form 1300”, wherever it appears;
 - ii. In the last sentence, add the text “CBP” before the text “Form 1300”;
 - c. In paragraph (b)(2), add the text “CBP” before the text “Form 1300”;
 - d. In paragraph (b)(3), remove the word “certificate”, wherever it appears, and add, in its place, the word “certification”; and
 - e. In paragraph (c), add the text “, or its electronic equivalent” after the text “Form 1302”.

§ 4.93 [Amended]

- 18. In the introductory text of § 4.93(c), remove the text “Customs Form 1302” and add, in its place, the text “CBP Form 1302, or its electronic equivalent”.

§ 4.99 [Amended]

- 19. Amend § 4.99 as follows:
 - a. Remove the text “Customs Forms”, wherever it appears, and add, in its place, the text “CBP Forms”; and
 - b. Remove the text “1302A,”, wherever it appears.

PART 103—AVAILABILITY OF INFORMATION

- 20. The general authority section for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

Section 103.31 also issued under 19 U.S.C. 1431;

* * * * *

- 21. Amend § 103.31 by revising paragraphs (a)(1) (a)(2) (d)(1)(iii), (d)(2)(iii), and (e) to read as follows:

§ 103.31 Information on vessel manifests and summary statistical reports.

- (a) * * *
 - (1) Of the information and data appearing on outward manifests, the

information listed below may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the below information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public. The data elements which may be copied and published, include:

- i. Voyage Number
- ii. Vessel carrier identification SCAC Code (the unique Standard Carrier Alpha Code assigned for each carrier in the National Motor Freight Traffic Association)
- iii. Bill of Lading and type
- iv. Date of Departure
- v. Manifested quantity and unit type
- vi. Manifested weight and weight unit
- vii. First Foreign Port of Destination
- viii. Port of Unloading
- ix. Country of Destination
- x. Container Number
- xi. Container Length, Height, Width, and Type
- xii. Equipment Description Code
- xiii. Piece Count
- xiv. Measurement and Unit of Measurement
- xv. Conveyance ID
- xvi. Manifest Number
- xvii. Vessel Country Code
- xviii. Place of Receipt
- xix. Seal information
- xx. Load Status
- xxi. Type of Service
- xxii. Hazmat code
- xxiii. Hazmat details
- xxiv. Shipper name and complete address
- xxv. Notify Party name and address
- xxvi. Consignee name and address
- xxvii. Record Status Indicator

(2) Commercial or financial information, such as the marks and numbers shall not be copied from outward manifests or any other papers.

* * * * *

(d) * * *

(1) * * *

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 22001 Loudon County Parkway, Mail Stop #1354, Sterling, Virginia 20598–1354; or submitted electronically via an email transmission at vesselmanifestconfidentiality@cbp.dhs.gov or via the Vessel Manifest Confidentiality Online Application on CBP's public website, www.CBP.gov.

* * * * *

(2) * * *

(iii) The certification must be submitted to the Vessel Manifest

Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 22001 Loudon County Parkway, Mail Stop #1354, Sterling, Virginia 20598–1354; or submitted electronically via an email transmission at vesselmanifestconfidentiality@cbp.dhs.gov or via the Vessel Manifest Confidentiality Online Application on CBP's public website, www.CBP.gov.

* * * * *

(e) *Availability of manifest data on Secure File Transfer Protocol (SFTP)*—

(1) *Availability.* Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on SFTP. This data, compiled daily, will contain all manifest transactions made on the nationwide system within the last 24-hour period. Data for which parties have requested confidential treatment in accordance with paragraph (d) of this section will not be included on the SFTP. These SFTP data files may be purchased at the government's production cost. SFTP files are available for specific days or on a subscription basis.

(2) *Requests and subscriptions.* Requests for SFTP files must be in writing and submitted to: U.S. Customs and Border Protection, ATTN: FIN OPS–REV Reimbursable Team, ATTN: Mail Stop 203 J, 8899 E 56th St., Indianapolis, IN 46249. Actual costs and other specific information to include payment information via electronic fund transfer should be ascertained by contacting Reimbursables at (317) 614–4520 or by email at reimbsvcs@cbp.dhs.gov. Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested SFTP files are not available via United States Postal Service. Subscriptions may be canceled provided CBP receives written notice at least 10 days prior to the end of the month. The CBP Technology Support Center must be notified in writing within seven days of technical problems with SFTP files in order to receive a replacement or credit towards future purchases. Refunds will not be provided. Information regarding the technical specifications of the SFTP files or problems with SFTP files should

be directed to CBP Technology Support Center at 1–800–927–8729.

* * * * *

PART 113—CBP BONDS

■ 22. The general authority section for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

■ 23. Revise § 113.62(k)(2) to read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(k) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.*

(1) * * *

(2) If the principal elects to provide advance inward or outbound cargo information to CBP electronically, the principal agrees to provide such cargo information to CBP in the manner and the time period required by law and regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

* * * * *

■ 24. Amend § 113.63 as follows:

■ a. Add a heading for paragraph (g);

■ b. Redesignate paragraph (g) as paragraph (g)(1); and

■ c. Add new paragraph (g)(2).

The additions read as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(g) *Agreement to comply with advance cargo information filing requirements.*

(1) * * *

(2) If the principal elects to provide advance inward or outbound cargo information to CBP electronically, the principal agrees to provide such cargo information to CBP in the manner and the time period required by law and regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

■ 25. Amend § 113.64 by revising paragraphs (d), (e), and (j) to read as follows:

§ 113.64 International carrier bond conditions.

* * * * *

(d) *Agreement by carrier to provide advance electronic information.* The carrier agrees to provide advance electronic information to CBP for arriving or departing conveyances in the manner and the time period required by law and regulation. If the carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

(e) *Agreement by party other than carrier to provide advance electronic information.* Any party other than an arriving or departing carrier who elects to provide advance electronic information to CBP for cargo on arriving or departing conveyances must provide or transmit that information in the manner and the time period required by law and regulation. If the party providing or transmitting information, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of \$5,000 for each violation, to a maximum of \$100,000 per conveyance arrival or departure.

* * * * *

(j) *Agreement to Provide Export Information.* The principal agrees to provide export information, including but not limited to any certifications of export, in the manner and in the time provided by law. If the principal defaults, the obligors agree to pay liquidated damages for each day's delinquency in an amount equal to penalties described in the provisions of title 13, United States Code, section 304(a) (13 U.S.C. 304(a)) as amended in accordance with civil penalty adjustment authorities.

* * * * *

Kristi Noem,

Secretary of Homeland Security.

[FR Doc. 2026–02662 Filed 2–9–26; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

4427-4842	2
4843-5090	3
5091-5212	4
5213-5266	5
5267-5664	5
5665-5804	9
5805-6134	10

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	140.....4843
Proclamations:	150.....4843
11006.....	160.....4843
11007.....	170.....4843
Executive Orders:	171.....4843
14379.....	13 CFR
14380.....	120.....5805
14381.....	14 CFR
5 CFR	39.....4428, 4431, 4434, 4438,
Proposed Rules:	4442, 4445, 4843
351.....	91.....4447
831.....	97.....5213, 5214
842.....	121.....4447
890.....	125.....4447
6 CFR	135.....4447
139.....	Proposed Rules:
7 CFR	36.....5880
205.....	39.....4857
Proposed Rules:	43.....5880
958.....	45.....5880
8 CFR	48.....5880
214.....	71.....5690
10 CFR	89.....5880
2.....	91.....5880
19.....	107.....5880
20.....	108.....5880
21.....	119.....5880
25.....	133.....5880
26.....	135.....5880
30.....	137.....5880
31.....	141.....4464, 4465
32.....	146.....5880
34.....	15 CFR
35.....	740.....5091
36.....	18 CFR
37.....	375.....4462
39.....	19 CFR
40.....	Proposed Rules:
50.....	4.....6074
51.....	103.....6074
52.....	113.....6074
54.....	20 CFR
55.....	655.....5040
60.....	Proposed Rules:
61.....	703.....5691
62.....	21 CFR
63.....	1300.....5216
70.....	1301.....5216
71.....	1304.....5216
72.....	1306.....5216
73.....	1307.....5216
74.....	23 CFR
75.....	Proposed Rules:
76.....	450.....4465
81.....	
95.....	
110.....	

26 CFR	40 CFR	1007.....4849	1253.....4849
Proposed Rules:	52.....5675, 5686	1011.....4849	Proposed Rules:
1.....5160	257.....5806	1012.....4849	171.....5996
48.....5160	Proposed Rules:	1018.....4849	172.....5996
31 CFR	174.....4466	1019.....4849	173.....5996
Proposed Rules:	180.....4466	1021.....4849	175.....5996
800.....5694	42 CFR	1102.....4849	176.....5996
802.....5694	433.....4794	1103.....4849	178.....5996
33 CFR	45 CFR	1104.....4849	180.....5996
117.....4846	Proposed Rules:	1105.....4849	
165.....4848, 5668, 5669, 5805	84.....4467	1109.....4849	50 CFR
36 CFR	47 CFR	1110.....4849	17.....5826
7.....5669	1.....5242	1113.....4849	635.....5855
Proposed Rules:	64.....5242	1114.....4849	622.....5092, 5243
7.....5700	Proposed Rules:	1115.....4849	679.....4856, 5093, 5243, 5244,
39 CFR	2.....5245	1116.....4849	5688, 5858
Proposed Rules:	73.....5881	1130.....4849	Proposed Rules:
3010.....5880	49 CFR	1132.....4849	17.....5103
3012.....5880	1002.....4849	1150.....4849	217.....4468
		1151.....4849	600.....5245
		1152.....4849	660.....4485, 5245
		1155.....4849	680.....4492
		1177.....4849	
		1180.....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>.

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S. 3424/P.L. 119-76
Bankruptcy Administration
Improvement Act of 2025
(Feb. 6, 2026; 140 Stat. 740)
Last List February 6, 2026

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